166-71

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No 626.

HOKE SMITH, SECRETARY OF THE DEPARTMENT OF THE INTERIOR, AND SILAS W. LAMOREAUX, COMMISSIONER OF THE GENERAL LAND OFFICE OF THE UNITED STATES, APPELLANTS,

VS.

JEFFERSON RAYNOLDS, FOR HIMSELF AND THE OTHER INHABITANTS OF THE TOWN OF LAS VEGAS, NEW MEXICO, AND OF THE LAS VEGAS GRANT AND THE TOWN OF LAS VEGAS.

PEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

FILED OCTOBER 15, 1896.

(16405.)

1896

1028.

Supreme Court U States
166 U.S.
717-720

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a **[Transcript of record. Court of appeals, District of Columbia, January term, 1896. No. 536. Hoke Smith, Secretary of the Department of the Interior, and Silas W. Lamoreaux, Commissioner of the General Land Office of the United States, appellants, vs. Jefferson Raynolds, for himself and the other inhabitants of the town of Las Vegas, in New Mexico, and of the Las Vegas grant and the town of Las Vegas. Appeal from the supreme court of the District of Columbia. Filed January 27, 1896.]**

1 In the court of appeals of the District of Columbia.

HOKE SMITH, SECRETARY, &C., ET AL., appellants,
vs.
JEFFERSON RAYNOLDS, FOR HIMSELF ET AL.
No. 536.

Supreme court of the District of Columbia. a

JEFFERSON RAYNOLDS ET AL.
vs.
HOKE SMITH, SECRETARY OF THE INTERIOR, et al.
In equity. 16227.

UNITED STATES OF AMERICA, *District of Columbia, ss:*

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

Supreme court of the District of Columbia. 1

Bill in equity.

In the supreme court of the District of Columbia, the 15th day of February, 1895.

JEFFERSON RAYNOLDS, FOR HIMSELF AND THE other inhabitants of the town of Las Vegas, in New Mexico, and of the Las Vegas Grant, and the town of Las Vegas, plaintiffs,
vs.
HOKE SMITH, SECRETARY OF THE DEPARTMENT of the Interior, and Silas W. Lamoreaux, Commissioner of the General Land Office of the United States, defendants.
No. 16227.
Docket 38.

To the Supreme Court of the District of Columbia, holding an equity court:

The plaintiffs state as follows:

1. The said Jefferson Raynolds and the other persons whom he represents and who are too numerous to be made parties by name are citizens and inhabitants of the town of Las Vegas and the territory contained in the land grant hereinafter described, situ-
2 ate in San Miguel County, in the Territory of New Mexico, in the United States of America, and suit is brought in his

own right and for those whom he represents, all having a common interest. Las Vegas is a town located upon said grant, and has been established, existing, and known as such town since the year 1835, and sues in its own right.

2. The defendant Hoke Smith is a citizen of the United States, residing in the District of Columbia, and is the Secretary of the Department of the Interior, and the defendant Silas W. Lamoreaux is the Commissioner of the General Land Office of the United States. The offices of the said Secretary of the Interior and Commissioner of the General Land Office are situate in the city of Washington, in the District of Columbia.

3. On the 20th day of March, 1835, Juan Dios Maese, Miguel
Archuleta, Manuel Duran, and Jose Antonio Casaos, for themselves
and in the name of twenty-five men, appeared before the corpora-
tion of El Bado, according to law, and stated that having registered
a vacant and uncultivated piece of land, commonly known by the
name of Las Vegas, on the Galinas River, which they desired for
the cultivation of moderate crops and for pasture and watering
places, then and there petitioned said corporation for said tract of
land, situate in the county of El Bado and bounded as follows: On
2 the north by the Sapello River, on the south by the boundary of the
grant of Don Antonio Ortiz, on the east by Aguage de la Zegua,
and on the west the boundary of the grant to San Miguel del Bado,
and they asked that the same be granted and set off to them, and
that they be given possession thereof. The tract of land contained
within said boundaries is the same tract of which survey was after-
wards made in 1860 and approved by the surveyor-general of New
Mexico, as will hereafter appear, and contains 496,446.96 acres of
land.

4. On the same day on which said petition was presented it was transmitted to the territorial deputation, with the recommendation that the same be granted.

5. On the 23rd day of March, 1835, the application was approved and the grant was made by the territorial deputation with the boundaries asked for, with the provision that persons who owned no land were to be allowed the same privilege of settling upon the grant as those who petitioned for it, and that "the pasture and watering places are free to all."

6. On the 24th day of March, 1835, Francisco Sarracino, the acting governor or political chief, directed the constitutional justice of El Bado to place the parties in possession of the lands prayed for.

7. On the 6th day of April, 1835, Jose Jesus Ulibarri, constitutional justice, went upon the ground with the parties, exhibited to them the original petition praying for the grant, pointed out the boundaries as set forth in the petition, and placed them in complete and full possession of all the land contained in said grant.

8. On the same day that the parties were so placed in possession
an assignment of small tracts for gardening and cultivation was made
to each of thirty-one persons. The aforesaid parties were
3 informed that, while each was entitled to cultivate and occupy
the tract particularly assigned to him, the other lands and

the water and pasture of the entire grant were to be free to all, and they should all contribute by their labor to the building of the walls of the town. Copies of the petition praying for the grant, the action of the corporation of El Bado transmitting the same to the territorial deputation, the action of the deputation approving the petition and making the grant, the direction of the acting governor or political chief to the constitutional justice, and proceedings of said justice by which the parties were placed in possession are hereto attached, marked Exhibits A, B, C, D, and E, and made part hereof. By the proceedings hereinbefore set forth all the land contained within the exterior boundaries of said grant became and was segregated from the public lands of Mexico.

9. Having been placed in possession of said lands by the proper authorities, there was soon established within the grant a settlement known as the town of Las Vegas. Each man was to be provided with arms and was to aid in building the wall around the town, which was to be a place of residence, refuge, and protection. Stock raising was the principle industry, and all the lands contained within the aforesaid boundaries were to be used for the purpose of carrying on this occupation. The cultivation of the soil was merely 3
an incident to the main business of raising stock. Small tracts situate within the exterior lines of the grant were assigned, as hereinbefore stated, to individual persons for cultivation, while the unassigned and uncultivated portions of the grant were held for the common use and benefit of all the occupants of the grant for the purpose of wood, water, and pasture. Other distributions of small tracts were made from time to time. On the 11th day of June, 1841, another list was returned, showing the distribution to be made to 118 parties, and on the 20th day of November, 1846, another distribution was made to 29 persons. Thus, from time to time, certain portions of the irrigable lands contained in the grant were settled, and during all this time the portions under cultivation were in charge of and occupied by the particular persons to whom they were set off, while the remaining portions of the grant were for the common use and benefit of the town of Las Vegas and all the settlers upon the tract. The small amounts of land assigned to particular persons for cultivation were in quantity from 50 varas to 1,000 varas, and were used and cultivated mainly for gardens.

10. The making of such distribution of small tracts to particular individuals out of and within the boundaries of the grant and the holding of the great body of the lands for the common and free use and benefit of the town and its people was in accordance with and a part of the established law, policy, and customs of the Mexican Government in making grants, and all the proceedings relating to the establishment of said grant in their origin and execution by which the town of Las Vegas and its inhabitants came into full ownership and possession thereof were and are in accordance with the laws, usages, and customs of Mexico, and all the terms,
4 portions, and conditions of said grant were and have been fully complied with upon the part of the settlers and inhabitants of Las Vegas. Neither the town of Las Vegas nor its

inhabitants have ever in any manner surrendered or waived their right to the possession and ownership of the entire tract contained within the boundaries of said grant.

11. From the time of being placed in possession as aforesaid, all the lands contained within the grant have been continuously and openly used and occupied by the inhabitants of Las Vegas and vicinity, within the exterior boundaries of the grant, as and for their own. The small tracts particularly assigned to individuals have been occupied and cultivated by them, while the great body of the land has been occupied and used by the inhabitants in common. The business of stock raising has been carried on to a large extent and the pasturage and water have been free to all and for the common benefit of all within the grant as provided and required by the most excellent deputation of New Mexico at the time it approved the grant and ordered the parties placed in possession. The settlement thus established in 1835 has grown and increased until at the present time more than three thousand families are located upon the grant
4 and there is a population of about 20,000 inhabitants. These people are the original settlers or their descendants and others who came upon the lands under the grant, and they all hold under the terms of said grant. They have made these lands their homes, have cultivated them, and erected valuable improvements thereon.

12. Until the year 1887 no person or persons ever questioned the rights of the inhabitants to the entire grant and all the lands contained therein except one Luis Maria Cabeza Baca, who claimed that a grant of the same lands had been made to him and his seventeen children in the year 1825. Neither the Government of Mexico nor that of the United States has ever pretended to any ownership or property or possessory rights in or over said grant since the same was given in 1835, and the Government of Mexico at all times recognized the grant to the town and people of Las Vegas as valid and subsisting.

13. By the treaty and protocol of Guadalupe Hidalgo, made between the United States and Mexico on the 30th day of May, 1848, it is provided that nothing in the treaty shall annul grants of land made by Mexico in the ceded territory; that all such grants shall preserve the legal value which they possess under Mexican laws, and that legitimate titles to every description of personal and real property existing in the ceded territories are those which were legitimate titles under the Mexican laws in California and New Mexico up to the 13th of May, 1848. What was good and valid in Mexico is good and valid in the United States.

14. By the 8th section of the act of July 22, 1854 (10 Statute, 309), it was made the duty of the surveyor-general, under the instructions to be given by the Secretary of the Interior, to ascertain the origin, nature, character, and extent of all claims to land under the laws, usages, and customs of Spain and Mexico.
5 He was authorized to issue notices, summon witnesses, administer oaths, &c., and required to make full reports to the Secretary of the Interior to be laid before Congress for final action "with a view to confirm bona fide grants" originating before the

session by the treaty of Guadalupe Hidalgo, denoting the various grades of title, with his decision as to their validity or invalidity; also to report all pueblos, the extent, locality, number of inhabitants, and nature and title of each, and until final action of Congress on such claims all lands covered thereby be reserved from sale or other disposal of the Government.

15. On the 21st day of August, 1854, Hon. John Wilson, Com-
missioner of the General Land Office, with the approval of Hon. R.
McClelland, Secretary of the Interior, issued instructions to the sur-
veyor-general of New Mexico, in regard to the survey of the land
claims in that Territory. Said instructions were minutely and care-
fully prepared, and, among other things, required the surveyor-
general to prepare a faithful report of all the land titles in New
Mexico which had their origin before the United States succeeded
to the sovereignty of that country. He was to state clearly and dis-
tinctly such as were bona fide and should be confirmed, and such as
were fraudulent and destitute of merit, and he was to give his opin- 5
ion as to the validity of each title, and present a map of the survey of
such grants as he should deem valid. He was further instructed to
deal with private land titles precisely as Mexico would have done
had the sovereignty not changed and to recognize all titles as she
would have done. A copy of the portion of said instructions relat-
ing to this subject is hereto attached, marked Exhibit F, and is
made part hereof.

16. Acting under instructions given to him by the Secretary of the Interior and the Commissioner of the General Land Office, William Pelham, surveyor-general of New Mexico, proceeded to make surveys of private land grants in that Territory. To this end, he gave public notice requiring all parties who claimed grants to appear before him and present their claims by petition, setting forth particularly the grounds and character of their title and the extent of territory embraced within their respective grants. Thereupon Francisco Lopez and Henry Connolly and Hilarie Gonzales, on behalf of themselves and a large number of the citizens of the United States, residents of the town of Las Vegas and its vicinity, filed with said surveyor-general their notice and petition making claim to said grant and asking that their claim and title be examined as required by law, and that said grant be confirmed to them. A copy of said notice and petition is hereto attached, marked Exhibit G, and made part hereof. At the same time the heirs of Luis Baca made a similar claim to the same tract of land.

17. Upon the presentation of said petitions the said surveyor-general called and examined witnesses. He also obtained and read all the original documents relating to said grant, and by all proper means obtained full and accurate information as to the nature and character of said grant, and having made such investigation, he made a report to the Commissioner of the General Land Office of his findings and conclusions, as he was required by law to do.

6 By and in said report the surveyor-general finds that the grant made to Juan de Dios Maese, being that under which plaintiffs now claim, was made in strict conformity to the laws and

usages of that country at the time, and that the lands are lawfully separated from the public domain and entirely beyond the disposal of the General Government. He also finds that the heirs of Baca have a grant to the same lands, which, taken by itself, appears to be a good and valid grant. He did not deem it proper for him to attempt to decide as to which of the two grants was superior to the other, but declares that in the absence of either the other would be and is a good and valid grant, and recommends that the grant be confirmed and the differences between the claimants be referred to the judicial tribunals for settlement. A copy of the report of the surveyor-general is hereto attached, marked Exhibit H, and made a part hereof.

Said claim referred to in the report of the surveyor-general is claim No. 20.

18. The report of the surveyor-general, and also the documents and proofs, were transmitted by the Commissioner of the General Land Office to the Secretary of the Interior, and by him to Congress
6 for its determination and action. A copy of the letters of transmission are hereto attached, marked Exhibit J, and made part hereof. The matter was referred to the Committee on Private Land Claims. On the 19th day of May, 1860, said committee made its report, recommending the confirmation of said grant, and, in order to avoid controversy between the town of Las Vegas and the heirs of Baca, it recommended that the said Baca heirs be provided with an equal amount of land elsewhere in the Territory of New Mexico, and that the land contained in the Las Vegas grant be confirmed to the town of Las Vegas. A copy of said report is hereto attached, marked Exhibit K, and made part hereof.

19. Thereupon the report of the committee was agreed to, and an act was passed by Congress giving and confirming to the town of Las Vegas and its people the aforesaid lands, and providing for the Baca heirs an equal amount of land in other parts of New Mexico, provided they shall make their selection within three years. A copy of the act confirming the Las Vegas grant is hereto attached, marked Exhibit L.

"On the 26th day of July, 1860, after the passage of the aforesaid act of confirmation, Joseph S. Wilson, Commissioner of the General Land Office, acting under and in pursuance of the aforesaid act of Congress, addressed a letter of instructions to A. P. Wilbur, then surveyor-general of New Mexico, directing him, among other things, to make a survey of the Las Vegas grant and ascertain accurately its extent and boundaries."

A copy of so much of said letter of instructions as relates to the survey of said grant is herewith attached and made part of this bill, marked Exhibit L*a*. Acting in obedience to said instructions, the surveyor-general proceeded and caused a survey of said grant to be made by Pelham and Clements, deputy surveyors, by which its exterior boundaries were run and its exact area ascertained.
7 A plat and map of said survey, showing metes, bounds, courses, distances, and quantity, was made.

By said plat and survey said grant was shown to contain 496,446.96 acres of land. Said survey and plat were, on the 8th day of December, 1860, examined and approved by the surveyor-general of New Mexico. A report of the survey made as aforesaid and the action of the deputy surveyors and the surveyor-general in relation thereto, together with the plat and map and the account of expenses for making the survey, were by said surveyor-general of New Mexico duly transmitted to the Commissioner of the General Land Office, and said account was adjusted and settled March, 1861, and said survey, map, and plat were filed in the General Land Office and constitute a part of its records.

All of which was in accordance with the law, rules, and regulations of the General Land Office in such cases. The plaintiffs claim and say that by the aforesaid proceedings the amount of land contained in the Las Vegas grant was officially and definitely ascertained.

A copy of said survey, plat, and map, taken from the original 7
now in the General Land Office, is attached to this bill, marked Exhibit I, and made part hereof.

20. The Baca heirs, under the provisions of said act, have settled upon 496,446.96 acres of land elsewhere, for which they have received patents from the United States, and are now in the possession and enjoyment of the same, and make no claim to the Las Vegas grant. By the proceedings hereinbefore stated and set forth and the act of Congress aforesaid the lands contained in the Las Vegas grant to the full extent of 496,446.96 acres, as shown by the report, survey, and plat of the surveyor-general, became and were absolutely and solemnly confirmed to the town of Las Vegas and its inhabitants by an indefeasible and unassailable right and title, and they were and are entitled to have and demand the undisturbed and peaceable enjoyment and ownership of the same.

21. Believing, as they had a right to do, and relying upon the validity of the grant and the act confirming the same, the inhabitants of said grant have gone on making improvements, establishing homes for themselves and families, and occupying and using the pasture lands and water in common. The population has largely increased since the year 1860, and each holder and occupier of land for gardening, cultivation, or pasture and water derives his right so to cultivate, hold, and occupy under and through the grant which was confirmed and approved by Congress as aforesaid.

22. From 1835 to 1860, a period of 25 years, the right of the town of Las Vegas and its inhabitants to own and occupy the lands contained in the grant was never questioned or doubted, except so far as related to the claim of the Baca heirs hereinbefore referred to; and the said Baca heirs having in pursuance of the act of June 21st, 1860, taken an equal amount of lands elsewhere and abandoned all claim to the grant in question, the right of the town of Las Vegas and its inhabitants from 1860 to 1887, a period of 27 years, was never questioned or doubted by anybody. During all this time
8 the validity of said grant and the right of the people to occupy,
possess, and enjoy it was fully recognized by the public authorities of New Mexico and the United States, and they lived in the peaceable possession and enjoyment of said lands with no doubt or cloud upon their title. On the 22nd of March, 1887, Geo. W. Julian, then

surveyor-general of New Mexico, by a communication to the Department of the Interior, claimed that the people upon the Las Vegas grant were not entitled to all the lands contained therein, but only to about 6,000 acres. On Nov. 5th of that year a resurvey was directed to be made, but the order was never executed.

23. On Feb. 1st, 1890, Edward F. Hobert, successor to Mr. Julian as surveyor-general of New Mexico, reviewed the recommendation and action of his predecessor and expressed disapproval of the same and recommended that a patent be issued to the town of Las Vegas on the survey made by Mr. Pelham in 1860.

24. On the 1st day of March, 1890, one P. Milhiser filed a protest
in the Interior Department against the survey proposed by Mr. Julian
8 and asked that a patent be issued to the guarantees [grantees]
named in the original grant. On the 19th day of March, 1890, the
board of county commissioners of San Miguel County made application for the issuing of a patent to the town of Las Vegas.

25. Afterwards, the matter coming up for action upon the application of said Milhiser, on the fifth day of December, 1891, John W. Noble, Secretary of the Interior, rendered an opinion and held that said Milhiser was not the owner of any interest in said lands which entitled him to the issuance of a patent; that such portions of the lands contained in the grant as were taken up and occupied by settlers at the time the Territory of New Mexico came under the United States should be surveyed and patents issued therefor; that said patent or patents should be issued to the town of Las Vegas, it having been named and recognized by Congress in the act of confirmation; that the aggregate amount of these individual holdings was about 6,000 acres, and that this survey should include only the lands which had been allotted under the terms of the original concession prior to the year 1848, and that the public survey should be extended over the rest and residue of the lands contained in the grant, and that the same be thrown open under the general laws. A copy of said decision is hereto attached, marked Exhibit M. The said decision and order of the Secretary of the Interior was directed to the Commissioner of the General Land Office and by him forwarded to the surveyor-general of New Mexico for his direction and guidance; but no survey in accordance with said decision was made under the administration of Mr. Secretary Noble.

Said decision of Mr. Secretary Noble, so far as it impeaches the validity of said grant to the town of Las Vegas and so far as it relates to the boundaries and quantity of land embraced therein and the right to make the proposed survey and turn back the great body of the land to be a part of the public domain, was and is, as plain-
tiffs believe and charge, contrary to law and in violation of
9 the provisions of the act of June 21st, 1860, and the rights
of these plaintiffs.

26. The defendant Hoke Smith came into office as Secretary of the Interior on the 4th day of March, 1893, and the defendant, the present Commissioner of the General Land Office, entered upon his duties as such Commissioner on the day of , 1893. In January, 1894, Messrs. Long & Fort, attorneys for certain inhabitants of Las Vegas, made application for a reconsideration of the

claim of Las Vegas to the entire grant hereinbefore mentioned; but the Secretary held that he had no authority or right to reverse or modify the decision of his predecessor, and declined and refused to further consider said case or in any manner to modify the ruling of Mr. Secretary Noble. A copy of said decision and holding is hereto attached, marked Exhibit N. Thereupon the Commissioner of the General Land Office, with the concurrence and approval and by the direction of the said Secretary of the Interior, directed and ordered the surveyor-general of New Mexico to proceed at once to carry out the orders of said Secretary Noble by making a survey of the lands 9 assigned to individuals prior to 1848, so that a patent may be issued to the town of Las Vegas for these several small tracts of land, and that all the rest and residue of the lands contained in the grant be turned back as a part of the public lands of the United States. In pursuance of the order of the Secretary of the Interior and the Commissioner of the General Land Office one Russell B. Rice has been employed and instructed to go upon the lands contained in said grant and make the survey, and in making of such survey he is to be guided and directed by the decision of the late Secretary of the Interior as hereinbefore set forth. Said surveyor has gone upon the lands of the plaintiffs and entered upon his work, and is now engaged in executing the orders of the defendants, the Secretary of the Interior and the Commissioner of the General Land Office; all of which said orders and acts are not by due process of law, but are contrary to law and in violation of the rights of and an interference with the property and privileges of the plaintiffs.

27. These plaintiffs further say that the lands contained in the Las Vegas grant and which the said defendants are now seeking and causing to be divided and dismembered never belonged to the United States and never constituted any part of the public domain, but belonged to the plaintiffs, and they are now in possession of all said lands and are entitled to the exclusive right of possession and ownership thereof; that the action of the Secretary of the Interior and the Commissioner of the General Land Office, whereby it is proposed to take from plaintiffs the great body of the lands in said grant and which are now of more than two million dollars in value, is contrary to law and in violation of the express terms of the grant and of the act of Congress by which said grant was confirmed to the town of Las Vegas and its inhabitants. Said grant was confirmed as an entirety, and all and every part thereof belongs to these plaintiffs, and the defendants have no authority or control over it.

28. The plaintiff Jefferson Raynolds and a large number of 10 those persons whom he represents have come upon said grant since the year 1848, and they are now owners and occupiers of lands, holding their right and title thereto under the Las Vegas grant. If the orders and directions of the Secretary of the Interior, the Commissioner of the General Land Office are carried out, the town of Las Vegas and its inhabitants will be irreparably injured. Those persons who had holdings prior to 1848, and whose cultivated lands it is proposed to survey, will be deprived of the greater rights and privileges which they now enjoy in and to the pastures, water, and advantages of the other lands of the grant, privileges, and

rights which are of great value to them, and the said Raynolds and others who have come upon the grant since 1848 and who now constitute three-fourths of the population of the grant will be dispossessed and driven from their homes and deprived of their property, and a cloud will be cast upon all the titles of land in the grant.

These people, relying upon the validity of the original grant and
10 believing that the provisions of the treaty of Guadalupe Hidalgo and of the act of Congress confirming the grant were binding and would be respected, and that they could rely on the good faith of the United States, have, as hereinbefore stated, gone into possession and ownership under titles and privileges derived and confirmed by the grant, and in good faith expended money, made improvements, and added greatly to the value of these properties, and the enforcement of the order of the Secretary of the Interior and Commissioner will bring upon them financial ruin and disaster and do them irreparable injury.

29. The plaintiffs have made every effort in their power to prevent the enforcement of this order. All their applications for a hearing have been denied, and they are now without any remedy or protection save that which a court of equity has power to grant, and they appeal to this court for protection and relief.

30. The plaintiffs therefore pray that process of subpœna may issue and be served upon said Hoke Smith, Secretary of the Department of the Interior, and said Silas W. Lamoreux, Commissioner of the General Land Office; that they may be made defendants herein and required to answer this bill; that an order may issue at once temporarily restraining them from the prosecution of said survey; that on the final hearing of this cause said order may be made perpetual, and that said defendants, their subordinates, agents, and employees, may be forever enjoined from carrying out the decision of said Secretary Noble or their orders made in respect thereto, and from any and all attempts to turn back said lands or any part thereof to the public domain or in any manner interfering with the rights, titles, and privileges of the plaintiffs, and that their title may be quieted, and for general relief.

JEFFERSON RAYNOLDS.
ALPHONSO HART,
Solicitor for Plaintiffs.
LONG & FORT, *Of Counsel.*

11 TERRITORY OF NEW MEXICO,
San Miguel County, ss:

I do solemnly swear that I have read the bill in equity by me subscribed and know the contents thereof, and that the facts therein stated upon my personal knowledge are true, and those stated upon information and belief I believe to be true.

JEFFERSON RAYNOLDS.

Sworn to before me and subscribed in my presence by the said Jefferson Raynolds this 13th day of December, 1894.

[SEAL.]

F. N. SMITH,
Notary Public.

EXHIBITS.

EXHIBIT A. 11

Grant, translation.

Seal third. (Seal.) Two rials.

For the years one thousand eight hundred and twenty-six and eight hundred and twenty-seven.

MOST RESPECTFUL CORPORATION: The citizens Juan de Dios Maese, Miguel Archuleta, Manuel Duran, and Jose Antonio Casaos, for themselves and in the name of twenty-five men, appear before your honorable body in the best and most approved manner and according to law and state that having registered a vacant and uncultivated piece of land, commonly known by the name of Las Vegas, on the Gallinas River, about five leagues distant from this settlement, which land we solicit for the purpose of planting a moderate crop, to have also the necessary land for pasture and watering places and having the following boundaries: On the north the Sapello River, on the south the boundary of the grant made to Don Antonio Ortiz, on the east the Aguage de la Zegua, and on the west the boundary of the grant to San Miguel del Bado, which grant we pray for without injury to any third party, binding ourselves to receive possession in the name of the federation and to comply with the reasonable and equitable conditions which your excellency, by virtue of the authority conferred upon you, may be pleased to establish for the grant of the land, being pleased to lay this our petition before the most excellent territorial deputation, having first obtained the customary report which by law is entrusted to your excellency, in order that that most excellent body may order the aforesaid grant to be made to us, in which the advancement of agriculture and the well being of several families without occupation are interested.

Therefore we request and pray your excellency that—con-
12 sidered us as having presented ourselves to yield to our
petition, which we swear not to be done in malice, and in
whatever may be necessary, &c.

JUAN DE DIOS MAESE. [RUBRIC.]
MANUEL DURAN. [RUBRIC.]
MIGUEL ARCHULETA. [RUBRIC.]
JOSE ANTONIO CASAOS. [RUBRIC.]

SAN MIGUEL DEL BADO, *March 20, 1835.*

SANTA FÉ, *March 24, 1835.*

On this date the justice of El Bado is notified to proceed according to the directions of the most excellent deputation and this government.

SARRACINO. [RUBRIC.]

12 EXHIBIT B.

SAN MIGUEL DEL BADO,
In the Town-house, on the 20th day of March, 1835.

The foregoing petition, signed by the subscribers thereto, is received. This corporation, desirous of encouraging the advancement of agriculture and the location of so many families without occupation, and being true that the land solicited as above is public land, and without injury to any third party nor of [torn] * * *, let this petition proceed to the most excellent territorial deputation in order that its excellency, if it sees proper, may provide them with the land prayed for, the entailment of which is earnestly aspired to.

JOSE ULIBARRI, *President.* [RUBRIC.]
FRANCISCO SENA, *First Justice.* [RUBRIC.]
LEONIOS LUCERO, *Fourth Justice.* [RUBRIC.]
GERONIMO GONZALES,
Second Justice. [RUBRIC.]
THOMAS ARAGON, *Attorney.* [RUBRIC.]
JOSE CANDELARIA FLORES,
Third Justice. [RUBRIC.]

Before me—

JOSE ANTONIO CASAOS,
Secretary of the Corporation. [RUBRIC.]

13 EXHIBIT C.

(Book 1st, page 6.)

OFFICE OF THE
MOST EXCELLENT DEPUTATION OF NEW MEXICO,
Santa Fé, March 23, 1835.

In consultation of to-day its excellency has resolved as follows:

The land contained within the boundaries expressed in this petition is granted not only to the petitioners and the residents of El Bado, but also generally to all who may be destitute of lands to cultivate, provided "that the grant of these lands is made on condition that the pasture and watering places are free to all; in view of all which the political chief will receive the petition which may be made and shall cause them to be provided for agreeably to what has been ordered."

In compliance with instructions, let these original proceedings be forwarded to the political chief, who will be pleased to execute what is therein ordered by this deputation, by whose order the foregoing is done.

R. ABREU, *Secretary.* [RUBRIC.]

13 In reference to a petition made by the presidents [torn] * * * Juan de Dios Maese, Miguel Archuleta, Manual Duran, and Jose Antonio Casaos, for themselves and in the name of twenty-five other individuals, dated the 20th inst., in which they solicited land in Las Vegas, its excellency the provisional deputation has resolved the following in reference to the matter:

Exhibit C^a. Exhibit D.

(Book 1st, page 6.)

Office of the Secretary of the
Most Excellent Deputation of New Mexico,
Santa Fé, March 23, 1895.

In consultation of to-day its excellency has resolved as follows:

The land contained within the boundaries expressed in this petition is granted not only to the petitioners and the residents of El Bado, but also generally to all who may be destitute of lands to cultivate, provided "that the grant to these lands is made on condition that the pasture and watering places are free to all; in view of all which the political chief will receive the petitions which may be made and shall cause them to be provided for agreeably to what has been ordered."

In compliance with instructions, let these original proceedings be forwarded to the political chief, who will be pleased to execute what is therein ordered by this deputation, by whose orders the foregoing is done.

R. Abreu, *Secretary.* [rubric.]

14 And I communicate it to you for the entire compliance therewith, taking into consideration that the grants are to be made according to the means of each one of the petitioners in order that they may not leave any land which may be given to them without cultivation. It is also convenient to suggest that you should select a site for a town, to be built by the inhabitants, together with such other steps as you may deem proper for the security of the inhabitants, who, on account of settling on the land indicated, will be included in your jurisdiction. You will therefore adopt such measures as will be most conformable to the laws.

You will retain the petition relative to the matter and return [torn], as this should be [torn], of the proceedings had by you, of all which you will inform this government so soon as it is in condition to do so.

God and liberty.

F. Sarracino. [rubric.]

Exhibit E.

Santa Fé, *March 24, 1835.*

To the Constitutional Justice of El Bado:

At this time there is no paper with the third seal in this office.

Sarracino.

At Nuestra Senora de los Dolores de Las Vegas, on the sixth day of the month of April, in the year one thousand eight hundred and thirty-five, jurisdiction of San Miguel del Bado, I, the citizen Jose de Jesus Ulibarri y Duran, constitutional justice, the only one in 14

this jurisdiction, proceeded to this town for the purpose of distributing the lands to twenty-five individuals mentioned in the petition dated March 28, 1835, and in general to those who are without lands, not only those within this jurisdiction, but also anyone who may present himself to me who has no occupation, and, having examined the land, I took the measures from north to south, after which I made the distribution according to that portion of the colonization law which refers to grants of the public lands, complying with the greatest care with the directions of the most excellent territorial deputation of New Mexico contained in its decree of the 23rd of March, 1835, and the decree of his excellency the political chief, Citizen Francisco Sarracino, dated the 24th of the same month. Each individual received a gratuitous piece of land, according to his means, with the understanding that of the lands given to the persons contained in the accompanying list none should remain uncultivated. The whole matter was concluded with the best measures which myself and the parties interested considered the most convenient, in order that each party should be satisfied with his share, setting opposite to each one's name the number of varas he received. The aforementioned list also contains the number of individuals who
resided in the new settlement, and, after having made the dis-
15 tribution, I proceeded to make known to them the petition
found at the commencement of this document, assigning them the same boundaries as are set forth in the petition. I also informed them that the water and pasture were free to all, and that the joint labor should be done by themselves without any dispute, and that the wall surrounding the town marked out should be made by them all, which being done, that they notify the justice in order that he may mark out to each one equally the portion he is entitled to; also that each one be well provided with arms, the care of which is entrusted to the lieutenant of police of that ward, who shall inspect the arms every eight days, and should he observe any infraction, to inform this court, as the head of the ward thereof, so as to provide the necessary measures. They were also informed that no one should sell his lands until he acquired the title prescribed by law to all colonists, and, in order that it may so appear at the present time and in the future, placed the originals in the archives under my charge, signing the same with three attending witnesses, in the absence of [torn], there being none in the terms [torn] law, to which I certify.

Jose Jesus Ulibarri. [rubric.]

Attending:
Jose Miguel Sanchez. [rubric.]
Attending:
Antonio Nieto. [rubric.]
Attending:
Manuel Duran. [rubric.]

The originals annexed to these proceedings, containing eight written pages, are deposited in the archives under my charge. I have so provided, ordered, and signed on said day, month, and year, and I sign with those in my attendance; to which I certify.

JOSE DE JESUS ULIBARRI. [RUBRIC.]

Attending:
MANUEL DURAN. [RUBRIC.]
Attending:
ANTONIO NIETO. [RUBRIC.]

List showing the number of individuals who occupy the new settlement entitled "Nuestra Senora de Dolores de Las Vegas" and showing the number of yards of land each one has received, which is as follows, to wit:

Citizen Acensio Baca	175
Citizen Simon Blea	100
Citizen Jose de Jesus Ulibarri	150
Citizen Santiago Ortega selected in Balendre, 150 yards of land	150
Citizen Juan de Dios Maese	250
Citizen Juan Jose Baca	200
Citizen Francisco Lopez	100
Citizen Tomas Baca	225

16 For gardens, 125 varas towards the north and 25 for a road to the watering place, one each side, and towards the south 750 varas for gardens, from whence the distribution continues, to the individuals contained in the list, noting that the number of yard' herein stipulated for g*ra*dens and roads is opposite to the square plaza which I marked out on either side. I left this number of yards for the inhabitants of the place, to be divided equally between them.

Citizen Jose Gaudalupe Baca	150	
Citizen Miguel Rendon	150	
Citizen Rafael Rendon	100	
Citizen Cruz Rendon	150	
Citizen Jose Lucero	200	
Citizen Foribo Crespin	100	
Citizen Pablo Ulibarri	150	
Citizen Antonio Ulibarri	185	
Citizen Juan Pedro Archuleta	150	
Citizen Eulogia Segma	100	
Citizen Ramon Alabarri	100	
Citizen Teodocio Quintana	200	
Citizen Felipe Tafallo	250	
Citizen Jose de Jesus Duran	100	16
Citizen Manuel Duran	175	
Citizen Antonio Romo	200	
Citizen Simon Romo	100	
Citizen Jose Marria Martin	200	
Citizen Miguel Martin	200	
Citizen Antonio Martin	200	
Citizen Juan Nepomuceno Martin	100	
Citizen Miguel Martin, jr	100	
Citizen Juan Jose Martin	100	

NOTE.—That from Jose de Jesus Duran to the end of the above list the land is situated in a valley on the opposite side of the river towards the east, also the number of varas set apart for gardens and road to watering place lie between Jose Maria Martin and Miguel Martin, sr., on the side above mentioned, and, in order that it may so appear, I have signed this 6th day of April, 1835, attaching to this list of distribution the names of such individuals as may apply for lands after this date.

JOSE ULIBARRI.

Citizen Victorine Baca	150
Citizen Hilario Gonzalez	455
Citizen Antonio Gallego	200
Citizen Jose Antonio Ulibarri, sr. (Jose Miguel Garcia took the place of Jose Antonio Ulibarri, sr., and entered upon his lands)	125
Citizen Rufino Gonzalez	100
Citizen Ambrocia Gonzalez	100
Citizen Santos Gonzalez	100
17 Citizen Francisco Sanchez	355
Citizen Rafael Rodriguez	166
Citizen Julian Ulibarri	225

Citizen Manuel Tafolla received a portion in the valley.

Citizen Mariano Gonzalez received a portion in another valley.

Citizen Mariano Gonzalez, sr	150
Citizen Manuel Garcia	250
Citizen Desiderio Maese	100
Citizen Rafael Duran	200
Citizen Vicente Romero	200
Citizen Santiago Ulibarri	600
Citizen Jose Leon Romero	200
Citizen Jose Antonio Flores	200
Citizen Rafael Duran	200
Citizen Rafael Romero	200
Citizen Miguel Romero	200
Citizen Juan Christobal Armijo	220
Citizen Jose Miguel Sanchez	200
Citizen Francisco Maese	111
Citizen Francisco Lucero	112
17 Citizen Miguel Caerio	150
Citizen Rafael Cestillo	100
Citizen Jose Fernando Gallego	100
Citizen Jose Dolores Sena	185
Citizen Jose Ramon Sena	125
Citizen Francisco Sena	200
Citizen Vicente Vilanueva	100
Citizen Jose Pablo Baca	100
Citizen Ramon Baca	100
Citizen Feribio Archuleta	100
Citizen Fernando Chaves (Ramon Pena took his land, the other having left)	100
Citizen Foribio Martin	100
Citizen Miguel Montanio	100
Citizen Jesus Pando	100
Citizen Juan Felipe Sanchez	100
Citizen Maria Encarnacion Armijo	100
Citizen Jose Flores	75
Citizen Cruz Martin, on the opposite side of the river and two little valleys	100
Citizen Polonio Herrera	100
Citizen Ferrer Herrera	50
Citizen Fabian Archuleta	100
Citizen Simon Romo	100
Citizen Ramon Vigil	100
The remainder was given to Juan Jose Vigil	170
Citizen Anastacio Roibal	175
Citizen Francisco Sanchez, also a little valley	150
Citizen Pedro Barela	100

Citizen Julian Limenez	100
18 Citizen Ramon Benavides	100
Citizen Antonio Garcia	100
Citizen Rafael Rodriguez	100
Citizen Pedro Gonzales	200
Citizen Andres Truqueque	100
Citizen Gabriel Crispin	100
Citizen Ascension Baca	100
Citizen Miguel Archuleta	1,067
Citizen Jose Maria Tafoya	700
Citizen Jose Miguel Carilli	100
Citizen Christobal Baca	500
Citizen Miguel Martin	125
Citizen Martin Romero, 50 more	100
Citizen Domingo Gama, 50 more	100
Citizen Santiago Sandoval	50

Names of those in the cañada of the Pecos from the road dividing Lodemora to the arroyo of Pecos.

Citizen Jesus Maria Montoya	varas..	200	
Citizen Santiago Montoya		100	
Citizen Antonio Jose Suiz		100	
Citizen Ascensio Sanez		100	
Citizen Tomas Ulibarri		100	18
Citizen Rafael Rodriguez (Antonio Saenz takes the place of Rodirguez by purchase)		100	
Citizen Domingo Pena		200	
Citizen Nerio Montoya (Anastacia takes Gonzales the place)		150	
Citizen Luis Maria Gonzales		170	
Citizen Parricio Benavides (Guillermo and Valeriamo take his place with 75 varas each in the valley above the revine on the river)		150	
Citizen Christobal Baca		250	
Citizen Pablo Pando		100	
Citizen Jesus Pando		100	
Citizen Pedro Garica		100	
Citizen Acensio Garcia		100	
Citizen Esquipula Baca		100	
Citizen Julian Archuleta		100	
Citizen Sebastian Duran		200	
Citizen Salvador Martin		200	
Citizen Rafael Niaso		200	
Citizen Andres Fruqueque		100	

H. Ex. Doc. 14-3.

Citizen Francisco Lucero	340
Citizen Jose Flores	100
Citizen Francisco Sanchez	400

Leaving 50 varas for a public road on the bank below where the plaza is situated, where 50 varas are to be left; Pedro Barela, two little valleys at the springs.

19 Names of citizens placed in possession of lands at the Puerticito, which is attached to the general list of distribution—that is, the Lower Puerticito.

Citizen Ramon Cisneros, no varas designated.
Citizen Jose Pablo Maese, no varas designated.

Citizen Juan Sais	varas..	350
Citizen Antonio Sais	varas..	250
Citizen Felipe Tafoya		125
Citizen Jose Dolores Duran		100
Citizen Jose Duran		125
Citizen Rafael Cistillo		100
Citizen Rafael Garcia		125
Citizen Francisco Antonio Sanchez (Upper Puerticito)		150

Citizen Juan Martin, for himself and father, from the boundary of Mariano Gonzales to the road.

Citizen Mariano Gonzales, jr	100
Citizen Don Lorenzo Baca	100
Citizen Ana Maria Chama	100
Citizen Augustin Quintana	100

(And a small valley in the river, not measured.)

19 Citizen Juan Jose Martin, from the boundary of Augustin to the road.

Citizen Juan Gallego, at the mouth of the cañon of the Aqua Sarca, on one side of the arroyo, from a rock in the middle of the valley to the lower rock.

Citizen Sebastian Duran	100
Citizen Jesus Duran	100

One hundred varas of land were given to Gregorio Vigil of the remaining lands of the Aqua Sarca, designating as boundaries on the west the little cañon of the Aqua Sarca, on the east the Arroyo Abayo, on the north a hill near the creston, and on the south the common boundary respecting the tracts already donated.

At the request of several citizens asking for lands composing the drippings of the plaza for gardens, I have given to each one twenty-five varas in length, with the precise condition that they should fence them in, and in case of not doing so they can not claim damages.

The individuals are as follows:

Francisco Sanchez	25
Antonio Saenz	25
Simona Gallegos	25

In this respect the quantity of land which I have distributed and which is watered by the ditch (acequia) which was constructed across the square for the purpose of finishing the temple is the remainder of the plain from the little hills, amounting to twenty varas, before descending to the meadow, which is divided by certain
20 mounds of stone on the northern side before descending to the plain where the public road is to run.

VEGAS, *June 11, 1841.*

Distribution.

Felipe Tafoya	150
Francisco Antonio Sanches	100
Miguel Tafoya	100
Prudencio Griego	150
Jose Zamora	100

Land distributed on the new ditch (acequia) which was open for the construction of the upper town.

Juan Manuel Martin	150
Jose Manuel Angel	100
Pedro Bastos	200
Jesus Castillo	100
Jose Flores	100
Manuel Archuleta	100
Crisantos Salas	100
Felipe Martin	100
Antonio Jose Sais	50

At the springs, the foreigners, William and Anthony Donaldson, 20 Jose Manuel Angel, a little corner in the cerrito, not measured; Don Ramon Vigil, a valley on the other side of the arroyo of the Pecos, from the wagon road to the blue hills, not measured.

In the town of Las Vegas, on the 25th day of November, 1846, at the request and by the official grant of land for cultivation made by the senior justice to the citizens contained in the present list, I proceeded, with my attending witnesses, to distribute said lands, and, taking the measurements on the northern side, the individuals soliciting the same were located in the following manner:

	Varas.
Miguel Antonio Fardrique	200
Gertrudis Salazar	200
Juan Jarimillo	200
Martin Romero	200
Jose Maria Garcia	200
Vicente Segma	200
Juan Jose Montoya	200
Jesus Maria Maese	200
Rafael Duran	200
Miguel Martin, jr	200

Anisteo Quintana, from the boundary of Miguel Martin to the road, without measurement.

The persons whose names appear on the foregoing list received the number of varas set opposite their names, it being understood that the water shall run on the bed of the river in case of a scarcity [not legible] by appointment, and to which shall be attached the
original communication granting the land; the present docu-
21 ment to be attached to the general grant made to Las Vegas
in order that it may so appear and for security in all time to
come; to which I certify.

JUAN DE DIOS MAESE. [RUBRIC.]

Attending:

ANTONIO SAENZ. [RUBRIC.]

Attending:

FRANCISCO BUSTAMENTE. [RUBRIC.]

OFFICE OF THE SENIOR JUSTICE OF THE
DISTRICT OF THE CENTRE.

Informed of the contents of your note of to-day, touching petitions for lands made by certain individuals of that place, in reply I have to state that you are authorized to place them in possession of said lands on the conditions referred to yesterday.

In reference to what you requested me to investigate, touching the evidence given by the police officer, I reply that it is true. Therefore you are requested to remove him from office and appoint Francisco Martin, relieving him and exonerating him from all duty.

God and liberty. TRINIDAD BARCELLO.

VALLEYS OF SAN AUGUSTINE, *November 20, 1846.* 21

To the Justice of the Peace Don Juan de Dios Maese:

Las Vegas, on the 17th day [torn], at the request of seven individuals who have registered a tract of public land, although the aforesaid land was given over three years since to another individual, who has not placed his hand on it, and seeing the neglect and little interest taken by the former possessor of the land, I, the citizen Hilaria Gonzales, accompanied by the petitioners, having examined the land and considered their petition just, both being laborers and industrious in matters of agriculture, I saw proper to place them in possession of the number of varas of land which each one can cultivate, with the further provision, besides those provided in the colonization laws, that within eighteen months they shall use every effort to prevent their land from lying idle and thereby lose their title thereto and be given to others who will cultivate them.

The following are the individuals to whom lands were distributed, which list shall be attached to the general grant:

Juan Pedro Archuleta	50	varas.
Jesus Gallego	50	"
Jose Candalaria Garcia	50	"
Rafael Rodriguez	50	"
Jose Martin	50	"
Eujogio Gonzalez	50	"

HILARARIO GONZALEZ. [RUBRIC.]

Attending:
ANTONIO SAENS. [RUBRIC.]
Attending:
RAMON GARCIA. [RUBRIC.]

22

EXHIBIT F.

Extracts from instructions of Commissioner of Land Office to surveyor-general of New Mexico under date of August 21st, 1854.

The duty which this enactment devolves upon the surveyor-general is highly important and responsible. He has it in charge to prepare a faithful report of all the land titles in New Mexico which had their origin before the United States succeeded to the sovereignty of the country, and the law contemplates such a report as will enable Congress to make a just and proper discrimination between such as are bona fide and should be confirmed and such as are fraudulent or otherwise destitute of merit and ought to be rejected.

The treaty of 1848 between the United States and Mexico (United States Statutes at Large, volume 9, page 922) expressly stipulates in the 8th and 9th articles for the security and protection of private property. The terms there employed in this respect are the same in substance as those used in the treaty of 1803, by which the French
22 Republic ceded the ancient province of Louisiana to the United States, and consequently in the examination of foreign titles in New Mexico you will have the aid of the enlightened decisions and the principles therein developed of the Supreme Court of the United States upon the titles that were based upon the treaty of cession and the laws of Congress upon the subject.

The security to private property for which the treaty of Guadalupe Hidalgo stipulates is in accordance with the principles of public law as universally acknowledged by civilized nations.

"The people changed their allegiance. Their relation to their ancient sovereign is dissolved, but their relations to each other and their rights of property remain undisturbed." United States vs. Percheman, 7 Peters' Reports.

In the case of The United States vs. Arredondo and others, 6th Peters' Reports, the Supreme Court declare that Congress "have adopted, as the basis of all their acts, the principle that the law of the province in which the land is situated is the law which gives efficacy to the grant and by which it is to be tested whether it was property at the time the treaties took effect."

Upon the same basis Congress has proceeded in the present act of legislation which requires the surveyor-general, under instructions from the Secretary of the Interior, to ascertain the origin, nature, character, and extent of all claims to land "under the laws, usages, and customs of Spain and Mexico," and arms the surveyor-general with power for the purpose by authorizing him to "issue notices, summon witnesses, administer oaths, and do and perform all other necessary acts in the premises."

The private land titles in New Mexico are derived from the authorities of old Spain, as well as of Mexico.

Among the "necessary acts" contemplated by the law and required by you is that you shall—

23 1st. Acquaint yourself with the land system of Spain as applied to her ultramarine possessions, the general features of which are found—modified, of course, by local requirement and usages—in the former provinces and dependencies of that monarchy on this continent. For this purpose you must examine the laws of Spain, the royal ordinances, decrees, and regulations, as collected in White's Recopilacion, 2 vols.

* * * * * * *

You will commence your session by giving proper public notice of the same in a newspaper of the largest circulation in the English and Spanish languages; will make known your readiness to receive notices and testimony in support of the land claims of individuals derived before the change of government.

You will require claimants in every case, and give public notice to that effect, to file a written notice setting forth the name of "present claimant," name of the "original claimant," nature of claim, whether inchoate or perfect, its date, from authority the original title was derived, with a reference of the evidence of the power and authority under which the granting officers may have acted, quantity claimed, locality, notice, and extent of conflicting claims, if any, 23 with a reference to the documentary evidence and testimony relied upon to establish the claim, and to show a transfer of right from the "original grantee" to "present claimant."

* * * * * * *

It is obligatory on the Government of the United States to deal with the private land titles and the "pueblos" precisely as Mexico would have done had the sovereignty not changed. We are bound to recognize all titles as she would have done—to go that far and no further. This is the principle which you will bear in mind in acting upon these important concerns.

* * * * * * *

JOHN WILSON,
Commissioner.

WM. PELHAM, Esq.,
U. S. Surveyor-General of New Mexico.

The foregoing instructions are hereby approved.

R. MCCLELLAND,
Secretary.

DEPARTMENT OF THE INTERIOR, *August 25, 1854.*

EXHIBIT G.

Notice.

UNITED STATES OF AMERICA,
Territory of New Mexico.

To the Hon. WILLIAM PELHAM,
Surveyor-General of the Territory of New Mexico:

Francisco Lopez and Henry Connelly and Hilario Gonzales, on behalf of themselves and a large number of citizens of the 24 United States, residents of the town of Las Vegas and its vicinity, in the county of San Miguel, Territory of New Mexico, represent to your honor that they and the citizens they represent are the claimants and legal owners of a certain tract of land lying and being situate in the county of San Miguel, in the Territory of New Mexico, which said land was granted by the provincial deputation of said Territory in the year A. D. 1835 to Juan de Dios Maese, Miguel Archuleta, Manuel Duran, and Jose Antonio Cassados in their own behalf and that of twenty-five other inhabitants of said county, which said grant is now filed with this petition (with leave to refer thereto as often as may be necessary), and the boundaries of said grant are as follows, to wit: Bounded on the north by the Sapello River, on the south by the boundary grant of Don Antonio Ortiz, on the east, the Aguage de la Llegua, and on the west the grant of San Miguel del Bado; and the said claimants claim under and by virtue of settlements made under said original grant and in conformity with the terms of said grant. Your petitioners refer to the laws, usages, and customs of Mexico in force at the time of the making of said grant, to the Spanish laws and 24 regulations which were declared and recognized by the Government of Mexico to be in force and effect; for which power and authority see Collection of the Decrees and Orders of the Cortes of Spain, published by Mariano Galvan in 1829, page 56 and from page 91 to 101. See also decrees of Mexico of June 4 and September 18, 1823, pages 123 and 180, 2 vol., Collection of Decrees. See also Ordenanzas de Tierras y Aguas, page 8; Peters' Reports, 436; 1 Howard, 24; 15th Peters, 130; 6th Peters, 621; Holcomb's U. S. Digest, pages 358 to 363.

The said claimants can not show the quantity of land embraced in said grant except as the same are set forth in the boundaries of said grant, nor can they furnish a plat of survey of said grant, as no survey of the land has ever been executed.

Your petitioners, the claimants, are also informed and believe that Thomas Cadeza de Baca, for himself and others, are claimants also for the lands embraced in said grant and now claimed by your petitioners. Your petitioners pray that their claim and title to said lands be examined as required by law, and that said grant be confirmed to them; and, as in duty bound, will ever pray, &c.

SMITH, HOUGHTON & ASHURST,
For Petitioners.

SURVEYOR-GENERAL'S OFFICE,
Santa Fé, New Mexico, August 20, 1859.

The above is a true copy of the original on file in this office.

WM. PELHAM,
Surveyor-General.

25

EXHIBIT H.

Report.

The heirs of Luis Maria Baca and the town of Las Vegas.

The first of the above-mentioned cases was filed in this office on the 19th of June, 1855, and the second on the 11th of September, of the same year.

These cases were set for trial at different periods, but owing to the absence of counsel and witnesses were not brought to a final close until the 10th of December, 1858.

The claim of the heirs of Luis Maria Baca is based on the following facts, as set forth in the original papers filed in the office by the claimants:

On the 16th of January, 1821, Luis Maria Cabeza de Baca, in his own name and that of seventeen male children, petitioned the provincial deputation of the State of Durango, under whose jurisdiction he avers the province of New Mexico then was, for a tract of public land suitable for cultivation and pasture called the Vegas Grandes, on the Gallinas River, in the jurisdiction of El Bado. In this petition he states that a like petition had been made to the authorities of the province of New Mexico, and that by a decree of the 18th of February, 1820, the land was granted to him and eight other persons, but as these persons already possessed land elsewhere they took no interest in its cultivation, and prays that the grant be made 25 to himself and his aforementioned children, with the following boundaries, to wit:

On the north the Chapelote River, on the south the boundary of El Bado, on the west the summit of the Pecos Mountain, and on the east the Aguage de la Llegua and the boundary of Don Antonio Ortiz. On the 29th of May Diego Garcia Conde and Miguel de Zubiria, president and secretary of the provincial deputation of Durango, informed Facando Melgares, the governor of New Mexico, that on the supposition that the companions of Don Luis Maria Cadeza de Baca had other lands whereon to pasture their cattle that deputation had determined to confer upon the said Baca the land commonly called Vegas Grandes, provided the other parties had erected no buildings on the land or made any other improvements, unless it was voluntarily agreed between the parties that Baca should reimburse them for any improvements they might have made, and that an equal quantity of land should be assigned to them wherever they would select it in place of those donated to Baca, and the governor of New Mexico was requested to inform the parties of what had been done.

On the 17th day of October, 1823, Bartolome Baca, political chief of New Mexico, directed the alcalde of El Bado to place Luris Maria Cabeza de Baca in possession of the land called for in his petition, as the eight individuals who accompanied him in his first petition had placed no improvements on the land, and the alcalde was required to certify at the foot of the order the proceedings had by him in the premises.

26 On the 27th day of February, 1825, Juan Bautista Vigil, the secretary of the most excellent deputation of New Mexico, certified that at the session of the 16th of the same month a petition of Don Juan Antonio Cabeza de Baca, son of Luis Maria C. de Baca and one of the grantees, was read, in which he refers to the grant made in the year 1821 by the provincial deputation of Darango, to which corporation New Mexico at that time belonged, and it was resolved that a record of the proceedings in the case be made and a true copy thereof given to the petitioner, and ratifying the grant made by the corporation of Durango on the date aforementioned. The petitioner was required to present himself before the territorial justice of El Bado with the copy above referred to, who, having then there the grant made to Salvador Montoya, was required to place the aforesaid Luis Maria Baca and male children in possession of the aforesaid land in accordance with the proceedings had in the premises and without injury to any third party.

On the 26th of December, 1825, Tomas Sena, the constitutional justice of El Bado, assigned as a reason for not placing the parties in possession of the land as he had been ordered to do that a proclamation had been issued for the election of his successor, at which he was compelled to attend, and that on the second day after the election had commenced he was taken violently ill and was compelled to postpone the election, as was well known to the messengers of Don Luis Maria Cabeza de Baca.

26 On the 15th of January, 1826, Governor Marbona again ordered the constitutional justice to place the parties in possession of the land granted.

The testimony of Manuel Antonio Baca shows that the parties were placed in possession of the land, although there is no documentary evidence of the fact.

The claim of Las Vegas is based on the following proceedings:

On the 20th day of March, 1835, Jusn de Dios Maese, Miguel Archuletta, Manuel Duran, and Jose Antonio Cassados, for themselves and in the name of twenty-five others, petitioned the corporation of El Bado for a tract of land for cultivation and pasture situated in the county of El Bado and bounded as follows: On the north by the Sapello River, on the south by the boundary of the grant of Don Antonio Ortiz, on the east by the Aguage de la Llegua, and on the west by the boundary of the town of El Bado.

On the same day the corporation of El Bado transmitted the petition to the territorial deputation with the recommendation that the petition be granted.

On the 23rd of March of the same year the grant was made by the territorial deputation with the boundaries asked for, with the further provision that persons who owned no lands were to be allowed the same privileges of settling upon the grant as those who petitioned for it.

On the 24th of the same month and year Francisco Sarreine, the acting governor or political chief, directed the constitutional justice of El Bado to place the parties in possession, which was done on the 6th day of April of the same year.

27 It is not supposed that Congress intended upon the establishment of the office of the surveyor-general of New Mexico that he should be required to determine questions of right between parties, but simply to ascertain whether the claims presented to him were of such nature as to separate the land embraced within the boundaries set forth in them from the public domain, and that conflicting claims between parties should be adjudicated before the proper tribunals of the country having jurisdiction in the premises.

Under this view of the case it will not be necessary to refer to any other points made by counsel than these touching the sufficiency of the titles given, and under which the respective parties claim.

It is contended by the last grantees that the concession made to Baca by the provincial deputation of Durango was void for want of power in the tribunal that assumed to make it.

At the time the grant was made to Baca the country was in a state
of confusion, arising from the severance of Mexico from the parent
country. Many of the States had not yet given their adhesion to
the new order of things, and in some places, as remote in the interior
as New Mexico, were not even aware that a new order of things
had been established. Therefore the several authorities of the country
exercised the power entrusted to them by the King of Spain or
his lawful authorities, and, as it is not disavowed that the State of 27
Durango held jurisdiction over the province of New Mexico, it is
supposed, even in the absence of any positive proof, that the deputation
of that State acted within the scope of its authority when it
made the grant to Baca; but in the confirmation of the grant by the
territorial deputation of New Mexico in 1825 it is conceded that the
province of New Mexico was under the jurisdiction of that State,
and that any grant made by its legally constituted authorities was a
good and valid one. In the case under consideration no condition
was attached; the grant was an absolute one. It has been held by
our courts that where no conditions were attached they could not be
raised by implication. So satisfied was Governor Melgares that the

deputation of Durango had a right to make the concession that he ordered the grantees to be placed in immediate possession, which he would not have done had he doubted in the least that the authorities of that State had exceeded their powers in granting lands in this province, over which he presided as governor.

But supposing the grant made to Baca by the deputation of Durango to have been null and void, its confirmation by the territorial deputation of New Mexico in 1825, at which period it is not denied it had the power to grant lands, would be equivalent to a new grant; and, as it is complete in itself so far as the severance of the land granted is concerned, to separate it from the public domain, it is a matter of very little importance whether the former grant by the deputation of Durango was valid or not. This grant is therefore deemed to be a good and valid one.

The grant made to Juan de Dios Maese and others is not contested
on the ground of any want of formality in the proceedings,
28 but, as far as the documentary evidence shows, is made in
strict conformity with the laws and usages of the country at
the time.

Testimony is introduced to show that the heirs of Baca protested in 1837 against the occupancy of the land by the claimants under the latter grant, and that they went upon the land knowing the existence of a prior grant; but as these matters are not deemed to be pertinent to the case, so far as this office is concerned, it is not necessary to comment upon them.

It is firmly believed that the land embraced in either of the two grants is lawfully separated from the public domain and entirely beyond the disposal of the General Government, and that in the absence of the one the other would be a good and valid grant; but as this office has no power to decide between conflicting parties, they are referred to the proper tribunals of the country for the adjudication of their respective claims, and the case is hereby respectfully referred to Congress through the proper channel for its action in the premises.

WM. PELHAM,
Surveyor-General.

SURVEYOR-GENERAL'S OFFICE,
Santa Fé, New Mexico, December 18, 1858.

28

EXHIBIT I.

(Here follows map marked Exhibit I, p. 28½.)

EXHIBIT J.

DEPARTMENT OF THE INTERIOR,
Washington, February 3, 1860.

SIR: I have the honor herewith to transmit for the action of Congress under the eighth section of the act approved July 22, 1854, the transcripts of nineteen private land claims in New Mexico designed for the House of Representatives, as indicated in the letter of the Commissioner of the General Land Office of the 30th November last, of which a copy is now enclosed.

Similar documents, submitted by the Commissioner in the same letter for the Senate of the United States, have been this day transmitted to the presiding officer of that body.

Very respectfully, your obedient servant,

J. THOMPSON, *Secretary*.

Hon. W. PENNINGTON,
Speaker of the House of Representatives.

GENERAL LAND OFFICE, *November 30, 1859*.

SIR: I have the honor to transmit herewith, in duplicate, the documents in relation to nineteen private land claims, numbers 20 to 38, both inclusive, in New Mexico, with the request that they may be laid before the ensuing Congress for their final action thereon. These claims have been investigated and approved by the surveyor-general of New Mexico, with the exception of number 26, which has been rejected by him.

29 The foregoing documents are put up in two separate packages, marked "U. S. House Reps." and "U. S. Senate," and each of the nineteen claims is accompanied by a schedule of documents specified in the Exhibit A herewith.

I have the honor to be, very respectfully, your obedient servant,

S. A. SMITH,
Commissioner.

Hon. J. THOMPSON,
Secretary of the Interior.

EXHIBIT A.—*Private land claims and town-site grants in New Mexico as approved or rejected by the surveyor-general of said Territory, submitted for the final confirmation of Congress.* 29

Number of claim.	Names of claimants.	Number of accompanying document.	Description of documents composing each claim.
20	Town of Las Vegas and Thos. Baca et als.	9	1, notice (Thos. Baca et als.); 2, grant—Spanish; 3, grant—translation; 4, testimony; 5, notice (town of Las Vegas); 6, grant—Spanish; 7, grant—translation; 8, testimony, and 9, report.

Here follow statement' of 18 other claims, numbered from 21 to 38, inclusive.

EXHIBIT K.

[36th Congress, 1st session. Senate. Rep. Com., No. 228. In the Senate of the United States. May 19, 1860.—Ordered to be printed.]

Mr. Benjamin made the following report (to accompany bill H. R. 195):

The Committee on Private Land Claims, to whom were referred bill No. 195 and various reports of the surveyor-general of the Territory of New Mexico in relation to private land claims in said Territory, have the honor to report—

That after examination of the various claims mentioned in the letter of said surveyor-general to the Commissioner of the General

Land Office, dated the 12th January, 1858, they concur in the recommendation of the said officer that the said claim' should be confirmed, with two exceptions, which they now proceed to notice.

The claim of John Scolly and others, being No. 9 on said 30 list, is recommended by the surveyor-general for confirmation for twenty-five square leagues. A careful examination of this claim, the evidence given in support of it, and the report of the surveyor-general have failed to satisfy your committee that said claim is valid for more than five square leagues. The grant was 30 for "cinco leguas cuadradas," which your committee interpret as meaning five square leagues and not five leagues square; and although the claimants were put in possession of five leagues square—that is, of twenty-five square leagues—yet this was done by a local magistrate only two years before the acquisition of the territory by the United States, and does not seem even to have been brought to the notice of or to have been approved by the superior authorities. The claim made is under a petition which originally prayed for "diez leguas cuadradas"—that is, for ten square leagues—and after various proceedings was restricted, according to the language of the petitioners themselves, to "cinco leguas cuadradas." The two expressions are identical in form; and if by "cinco leguas cuadradas" twenty-five square leagues were meant, then, under the original petition, the prayer for a grant of "diez leguas cuadradas" was a prayer for one hundred square leagues. This proposition is too extravagant for belief, and your committee therefore recommend that the confirmation of the claim of Scolly and others be restricted to five square leagues.

The second exception made by your committee is in relation to claim No. 17, which the surveyor-general recommends in favor of Cornelio Vigil and Ceran St. Vrain for the full extent embraced in a survey annexed to the papers. The quantity of land embraced in this survey does not appear, but by a close examination of some of the distances shown and a rough calculation of the others there can not well be less than one hundred square leagues and possibly much more. Now, a reference to the petition and grant shows that the claimants, on the 8th of December, 1843, petitioned Governor Armijo, stating that they had "examined the land embraced within the Huerfano Piripa and Cucharas rivers to their junction with the Arkansas and Aminas rivers, and finding sufficient fertile land for cultivation and abundance of pasture and water, &c., they pray you to grant to each one of us a tract of land in the above-mentioned locality, protesting that, in the coming spring, we will commence operations which will be continued until the colony shall be established and settled," &c.

On the 9th December, 1843, the governor referred this petition "to the justice of the peace of the proper jurisdiction, who will give the possession referred to in the petition, as this government desires to encourage agriculture and the arts."

On the 25th December, 1843, the two claimants presented a petition to the justice of the peace, setting forth that the governor had granted them "the public land contained in the accompanying petition" and asking the execution of his order.

Under these petitions and orders the two claimants were placed by the justice of the peace on the 2nd January, 1844, in possession, not each "of a tract of land in the above-mentioned locality,"
31 but were jointly put in possession of the whole district of country, including the lands on both banks of three tributaries of the Napeste or Arkansas River from their mouths nearly to their sources, and without the slightest apparent warrant in the governor's order for so exorbitant a grant.

If this demarkation of boundaries by the justice of the peace had 31
been afterwards brought to the notice of the governor and approved by him, a grave question would still remain as to his power to concede entire districts of country without the authorization of the provincial assembly or the Mexican Congress; but your committee find no proof in the paper of approval of this action by any officer superior to the justice of the peace, and as his power clearly could not go beyond the execution of the governor's orders your committee can not concur in the recommendation of the surveyor-general that this grant be confirmed for the full extent claimed. It is, however, plain that these parties are entitled to have their title confirmed to some extent, and this involves the inquiry as to the true meaning of the words "a tract of land," claimed in the original petition.

Under the Mexican colonization law of 1824 and the regulations of 1828 the extreme quantity allowed to be granted by the governor to any colonist was eleven square leagues. In the absence of any other guide, your committee suggest that a restriction of the confirmation to an extent of eleven square leagues for each claimant would be the utmost they could fairly expect, and would be not only a fair but a liberal compliance with the obligation imposed on the good faith of the United States under the terms of the treaty of Guadakupe Hidalgo.

In relation to the proper location of these tracts a difficulty would arise, resulting from the fact, ascertained by your committee, that a certain number of settlers, represented to be forty or fifty, have settled on tracts of land conceded to them by the above-mentioned grantees, in different parts of the tract set apart for them by the justice of the peace, so that if the two tracts of eleven leagues each were located in any part of the district of country referred to the location would necessarily exclude some of the settlers, who have gone onto the land in good faith and ought not to be disturbed. This difficulty can only be avoided by surveying the tracts of these actual settlers wherever found within the district and deducting their area from the area of the two eleven-league tracts, leaving the remainder only of these two tracts to be located in one body. To this mode of location the claimants, who were represented before your committee by Judge Watts as their counsel, and one Ceran St. Vrain was present in person, have given their consent, and the committee has made, therefore, proper provision in the bill.

The second report of the surveyor-general of said Territory was communicated to the Senate by the Secretary of the Interior by letter addressed to the Vice-President under date of 3rd February, 1860, and consists of an abstract marked Exhibit A, comprehending nineteen claims, numbered from twenty to thirty-eight, both inclusive.

32 The bundle of papers containing the copies of titles, the evidence, and the report of the surveyor-general on each claim separately have been examined by the committee and they concur
32 fully in the reports of that officer, recommending the confirmation of all said claims, except that which is numbered twenty-six, in the name of Juan B. Vigil.

The surveyor-general recommends the rejection of this last-mentioned claim, and your committee concur with him in the opinion that it ought not to be confirmed; but the claimants appeal to Congress, which ought not, in the judgment of the committee, to take the decision of the matter into its own hands and refuse claimants an opportunity of establishing their rights in a court of justice, if they can.

Amongst the claims embraced, however, in this second report and recommended for confirmation are two which cover the same tract of land and are embraced in one number, to wit, No. 20.

To this tract the two claimants are, first, the heirs of Luis Maria Baca claim under a grant made by the provincial deputation of Durango to said Baca and his seventeen sons on the 29th May, 1821, which grant was ratified and confirmed on the February, 1825, by the departmental assembly of New Mexico. This grant was in fee, and is a genuine and valid title; second, the town of Las Begas or Las Vegas. This town claims under a grant made on the 25th March, 1835, to Juan de Dios Maese and twenty-seven others by the territorial deputation on a petition which represented the land to be public land, and the petitioners were put in possession. The land has been divided out, and several hundred families are located on it.

The surveyor-general, having none but ministerial duties to perform, has recommended the confirmation of both these titles, leaving to the respective claimants the right of adjusting their conflicting claims in the courts; but Congress has other duties imposed on it, and is bound to legislate in such manner as to prevent, if possible, so disastrous a result as the plunging of an entire settlement of families into litigation, at the imminent hazard of being turned out of their homes or made to purchase a second time from a private owner lands for which they paid their Government a full equivalent in the labor, risk, and exposure by which they have converted a wilderness, surrounded by hostile savages, into a civilized and thriving settlement, and this can be done with little loss or cost to the Government.

The claimants under the title to Baca, also represented by Judge Watts as their counsel, have expressed a willingness to waive their older title in favor of the settlers if allowed to enter an equivalent quantity of land elsewhere within the Territory, and your committee can not doubt that Congress will cheerfully accept the proposal, which, indeed, would undoubtedly have been acceded to by Mexico if the Territory had remained hers, and to whose rights and duties the United States have succeeded.

The committee have therefore prepared an amendment to the House bill, by way of substitute, embracing the several provisions above referred to.

33 Exhibit L. 33

AN ACT to confirm certain private land claims in the Territory of New Mexico.

Be it enacted, &c., That the private land claims in the Territory of New Mexico, as recommended for confirmation by the surveyor-general of that Territory, and in his letter to the Commissioner of the General Land Office, of the twelfth of January, eighteen hundred and fifty-eight, designated as numbers one, three, four, six, eight, nine, ten, twelve, fourteen, fifteen, sixteen, seventeen, and eighteen, and the claim of E. W. Eaton, not entered on the corrected list of numbers, but standing on the original docket and abstract returns of the surveyor-general as number sixteen, be, and they are hereby confirmed: *Provided*, That the claim number nine, in the name of John Scolley and others, shall not be confirmed for more than five square leagues; and that the claim number seventeen, in the name of Cornelio Vigil and Ceran St. Vrain, shall not be confirmed for more than eleven square leagues to each of said claimants.

June 21, 1860, vol. 12, p. 71, p. 6, certain private land claims in New Mexico confirmed. E. W. Eaton, John Scolley, Cornelio Vigil, Ceran St. Vrain.

SEC. 2. *And be it further enacted*, That the surveying the claim of said John Scolly it shall be lawful for him to locate the five square leagues confirmed to him in a square body in any part of the tract of twenty-five square leagues claimed by him; and that in surveying the claims of said Cornelio Vigil and Ceran St. Vrain, the location shall be made as follows, namely: The survey shall first be made of all tracts occupied by actual settlers holding possession under titles or promises to settle, which have heretofore been given by said Vigil and St. Vrain, in the tracts claimed by them, and after deducting the area of all such tracts from the area embraced in twenty-two square leagues, the remainder shall be located in two equal tracts, each of square form, in any part of the tract claimed by the said Vigil and St. Vrain selected by them; and it shall be the duty of the surveyor-general of New Mexico immediately to proceed to make the surveys and locations authorized and required by the terms of this section.

Survey and location of claims of Scolley, Vigil, and St. Vrain.

SEC. 3. *And be it further enacted*, That the private land claims in the Territory of New Mexico, as
34 recommended for confirmation by said surveyor-general 34
in his reports and abstract marked Exhibit A, as communicated to Congress by the Secretary of the Interior in his letter dated the third of February, eighteen hundred and sixty, and numbered from

Certain other private land claims in New Mexico confirmed.

twenty to thirty-eight, both inclusive, be, and the same are hereby, confirmed, with the exception of the claim numbered twenty-six, in the name of Juan B. Vigil, which claim, numbered twenty-six, is not confirmed.

Except that of Juan B. Vigil.

Effect of confirmation.

SEC. 4. *And be it further enacted*, That the foregoing confirmation shall only be construed as quitclaims or relinquishments, on the part of the United States, and shall not affect the adverse rights of any other person or persons whomsoever.

Juan B. Vigil may institute suit, &c.

SEC. 5. *And be it further enacted*, That it shall or may be lawful for the said Juan B. Vigil or any person claiming title under him, to institute suit against the United States for the lands claimed and embraced in said claim number twenty-six, not confirmed under the provisions of the third section of this act; said suit to be instituted in the supreme court of the Territory of New Mexico, to be defended by the district attorney of the United States for said Territory, under the direction of the Attorney-General of the United States, with the right of appeal to either party from the decision of said supreme court to the Supreme Court of the United States, if such appeal be asked for within one year from the rendition of the judgment in said supreme court of the Territory of New Mexico, and not thereafter:

Proviso.

Provided, That if the suit authorized by this section be not instituted within two years from the passage of this act, the said claimants shall be presumed to have abandoned all right or title to the lands embraced in said claim number twenty-six, and said lands shall thenceforth be held and deemed to be public lands belonging to the United States: *And provided further*, That in the determination of the suit authorized to be instituted by the terms of this section, the courts shall be governed by the treaty of Guadalupe Hidalgo, the law of nations, the laws, usages, and customs of the government from which the claim is derived, the principles of equity, and the decisions of the Supreme Court of the United States so far as they are applicable.

Proviso.

Heirs of Luis Maria Baca.

35

SEC. 6. *And be it further enacted*, That it shall
35 be lawful for the heirs of Luis Maria Baca, who make claim to the said tract of land as is claimed by the town of Las Vegas, to select instead of the land claimed by them, an equal quantity of vacant land, not mineral, in the Territory of New Mexico, to be located by them in square bodies, not exceeding five in number. And it shall be the duty of the surveyor-general of New Mexico to make survey and location of the lands so selected by said heirs of Baca when thereunto required by them: *Provided, however*, That the right hereby granted to said heirs of Baca shall continue in force during three years from the passage of this act and no longer.

Survey and location.

Proviso.

EXHIBIT L^a.

[Extract from letter of the Commissioner of General Land dated July 26, 1860, to surveyor-general of New Mexico relative to the survey of the Las Vegas grant.]

In advance of the publication of the laws passed by the last Congress, I herewith transmit you a slip of newspaper containing the act to confirm certain private land claims in the Territory of New Mexico, approved June 21, 1860, showing what particular private land claims were finally confirmed in addition to those confirmed by the act of December 22, 1858. You are directed th'roughly to digest the provisions of the act of Congress approved June 21, 1860, and to issue appropriate instructions as to the priorities of surveys. * * *

In this connection I have to draw your special attention to the sixth section of said act of June 21, 1860. That section refers to the claim of the heirs at law of Louis Maria Baca, which is entered as No. 20 in surveyor-general's report dated Sept. 1, 1859, and the abstract marked Exhibit A, submitted by the Secretary of the Interior, dated Feb'y 3, 1860, to Congress, and as that land is also claimed by the town of Las Vegas under said No. 20 in the said report.

This law gives the land to the Vegas town claim and allows the Baca heirs to take an equal quantity of vacant land, not mineral, in New Mexico, to be located by them in square bodies not exceeding five in number.

To give this law timely effect you will give priority in surveying private land claims to this claim, particularly as it is in the vicinity—about four miles from the outside line of the public surveys. You will proceed to have the exteriors of the Las Vegas town claim properly run and connected with the line of the public surveys. The exact area of the Las Vegas town tract having been thus ascertained, the right will accrue to the Baca claimants to locate a quantity equal to the area of the town tract elsewhere in New Mexico as vacant land, not mineral, in square bodies not exceeding five in number.

36

EXHIBIT M.

36

Las Vegas.

(1.)

The Las Vegas grant was not a grant in fee to the applicants or the town of Las Vegas within the described boundaries, but a concession of separate tracts to settlers and occupants, and the act of June 21, 1860, confirms the title to lands thus assigned and occupied within the prescribed boundaries of the original grant, whether within the town of Las Vegas or outside of the same.

The confirmation of said grant was made direct to the town of Las Vegas, not only as the most convenient form of confirmation and issuing patent thereon, but also for the reason that said town, acting in the interest and for the benefit of its people, was the proper party to ask for and receive from Congress the relief sought.

A resurvey of this grant should be made so as to include only the lands allotted or assigned to settlers under the terms of the original concession at the time the Territory of New Mexico became subject to the laws of the United States, and a patent should issue on such survey to the town of Las Vegas for the benefit of the proper parties.

The lands not included in such resurvey should be surveyed as public lands and opened to disposition under the general land laws.

The legal status of the town of Las Vegas and its competency to take title as a confirmee having been recognized by Congress, will not be questioned by the Department.

[Secretary Noble to the Commissioner of the General Land Office, December 5, 1891.]

By section 3 of the act of June 21, 1860 (12 Stat., 71), it was enacted—

That the private land claims in the Territory of New Mexico, as recommended for confirmation by said surveyor-general in his reports and abstract, marked Exhibit A, as communicated to Congress by the Secretary of the Interior in his letter dated the third of February, eighteen hundred and sixty, and numbered from twenty to thirty-eight, both inclusive, be, and the same are hereby, confirmed, etc.

No. 20 is described in Exhibit A as claimed by the "town of Las Vegas and Thomas Baca et al." It was surveyed as the "Las Vegas grant," and the plat thereof approved by the surveyor-general December 8, 1860. As thus surveyed it contains an area of 496,446.96 acres. No patent has been issued therefor.

On March 22, 1887, Mr. Julian, then surveyor-general of New Mexico, called the attention of your office to said survey, expressing the opinion that said grant should not legitimately embrace more than twenty thousand acres, which estimate was subsequently reduced to six thousand, and he urged that a resurvey of the same
37 37 be ordered. After some correspondence, on November 5,
1887, a resurvey was directed to be made in accordance with the views of Mr. Julian, and he was directed to use $1,000 of the appropriation for the survey of private land claims in New Mexico. In February, 1888, the surveyor-general reported that the above sum was nearly exhausted, and suggested the propriety of asking for a special appropriation from Congress of $6,000, the amount estimated as necessary to complete the work. Thereupon your predecessor, on April 4, 1888, transmitted the correspondence to this Department for consideration and instruction.

On February 1, 1890, Edward F. Hobart, the successor of Mr. Julian as surveyor-general of New Mexico, in a letter to your office reviewed the recommendation and action of his predecessor, expressed disapproval of the same, and recommended that patent be issued to the town of Las Vegas on the present survey.

On March 1, 1890, one P. Millhiser, "for petitioners and cl'm'ts under orig. grantees," filed in your office a protest against the proposed survey and asked that a patent for said lands be issued to the grantees named in the original grant. This application of Millhiser was sent here by letter of March 6th.

On March 18, 1890, the board of county commissioners of San Miguel County, New Mexico, as agents for the citizens of the entire town of Las Vegas and those residing on the grant around the town, filed in this Department an application for the issue of a patent for said grant to the town of Las Vegas, to be delivered to said board as custodian in accordance with the request of the people in town meeting assembled.

On March 24, 1890, the Commercial Club of Las Vegas filed here a petition earnestly urging that patent for said grant be issued according to the confirmation act of Congress and be placed in the hands of the proper custodians.

In regular order the first matter to be determined is whether the resurvey should be further prosecuted, as recommended by the former surveyor-general and approved by your predecessor. A conclusion arrived at on this important subject will incidentally determine most of the other questions in the case, inasmuch as it is alleged that in making the former survey the officers entirely misapprehended the character and extent of the grant. A consideration of these matters, therefore, is necessary.

By the act of June 21, 1860, supra, Congress confirmed the grant "as recommended for confirmation" by the surveyor-general "in his reports and abstracts marked Exhibit A." The exhibit referred to, in the column for designating the number of the claims, has the numerals "20." In the column for the names of claimants, in line with the figures 20, appear the words, "Town of Las Vegas and Thos. Baca et als." Then follows the list of papers sent up, nine in number, the last being the "report." Exhibit A thus only shows that claim was made for grant 20 by the town of Las Vegas and the Baca claimants. (See page 2, H. Ex. Doc. No. 14, 1st sess. 36th Cong.) We must, therefore, turn to the report to find what the surveyor-general "recommended for confirmation." This
38 report, *is* found in the same executive document (p. 42 et s.), 38
is too long for insertion entire herein, though it must be largely quoted from.

It first deals with the claim of the Baca heirs, and finds that claim for the described land to be "a good and valid one," absolute, with no condition attached to it, and that it was made by the Mexican authorities to Luis Maria Cabeza de Baca and his seventeen male children in the year 1821, and afterwards confirmed to the children by the proper authorities in 1825. The surveyor-general, however, declined to determine whether the Baca claim was superior to the other, but Congress determined the matter in the affirmative, as will be seen by reference to Senate Reports of Committees (No. 228), 36'h Congress, 1st session. This report states that the grant to Baca and his sons "was in fee and is a genuine and valid title;" that the claimants under that title are willing to waive "their older title" and to enter an equal quantity of land elsewhere in the Territory. It was urged that the proposal be accepted, and to carry out this purpose section 6 as now found in the act of June 21, 1860, supra, was reported. Congress accepted the recommendation and passed the act, as before stated. This eliminates the Baca claim entirely from the case, except so far as it may be, perhaps, necessary to refer to it incidentally in discussing the other claim, which alone is now to be dealt with.

As to this claim the report of the surveyor-general on page 44 says:

The claim of Las Vegas is based on the following proceedings:

On the 20th day of March, 1835, Juan de Dios Maese, Miguel Archuleta, Manuel Duran, and Jose Antonio Cassaos, for themselves and twenty-five others, petitioned the sorporation of El Bado for a tract of land for cultivation and pasture situated in the county of El Bado and bounded as follows: On the north by the Sapello

River, on the south by the boundary of the grant of Don Antonio Ortiz, on the east by the Aguage de la Llegua, and on the west by the boundary of the town of El Bado.

On the same day the corporation of El Bado transmitted the petition to the territorial deputation with the recommendation that the petition be granted.

On the 23d of March of the same year the grant was made by the territorial deputation with the boundaries asked for, with the further provision that persons who owned no lands were to be allowed the same privilege of settling upon the grant as those who petitioned for it.

On the 24th of the same month and year Francisco Sarracino, the acting governor or political chief, directed the constitutional justice of El Bado to place the parties in possession, which was done on the 6th day of April of the same year.

At this point of the report a discussion is entered upon as to whether it is the duty of the surveyor-general to determine which of the grants has the superior title, and, concluding that this duty does not devolve upon him, he closes his report by saying:

"It is firmly believed that the land embraced in either of
39 39 the two grants is lawfully separated from the public domain
and entirely beyond the disposal of the General Government, and that in the absence of the one the other would be a good and valid grant, but, as this office has no power to decide between conflisting parties, they are referred to the proper tribunals of the country for the adjudication of their respective claims, and the case is hereby respectfully referred to Congress through the proper channel for its action in the premises."

The Senate committee, on page 3 of its report before referred to, was of the opinion that the surveyor-general "recommended the confirmation of both these titles, leaving to the respective claimants the right of adjudicating their conflicting claims in the courts." In this entire recommendation neither the committee nor Congress concurred, but, having disposed of the Baca claim otherwise, Congress confirmed the claim of the town of Las Vegas, "as recommended"—that is, confirmed its title to whatever lands were included in the grant referred to.

The surveyor-general does not state in his report what this title is, but leaves it to be implied. Its nature and character are not specified. In relation to the Baca grant, on page 45 he says "no condition was attached; the claim was an absolute one." But in relation to the Vegas grant he uses different language. He says:

"The grant made to Juan de Dios Maese and others is not contested on the ground of any want of formality in the proceedings, but, as far as the documentary evidence shows, is made in strict conformity with the laws and usages of the country at that time."

Inasmuch as under "the laws and usages of the country at that time" different kinds of grants were allowable, the above-quoted statement does not throw much light upon the nature of the title by which the lands within the Las Vegas grant were held, whilst it is made very plain that the Baca title was an absolute fee simple. In this view the Senate committee concurred, saying of the latter: "This grant was in fee and is a genuine and valid grant;" whilst of the claim of the town of Las Vegas it says:

"This town claims under a grant made on the 25th of March, 1835, to Juan de Dios Maese and twenty-seven others by the territorial deputation, on a petition which represented the land to be public lands, and the petitioners were put in possession. The land has been divided out, and several hundred families are located upon it."

h. This statement of the committee does not afford much assistance in the immediate inquiry. The surveyor-general also says that he believes "land embraced" in the grant "is lawfully separated from the public domains and entirely beyond the disposal of the General Government." But this hardly helps, as the same thing could be said properly of any other grant recommended for confirmation.

The case is, then, in this condition: Congress confirms the grant "as recommended" by the surveyor-general; that officer recommends that whatever title was granted by the Mexican authorities be confirmed. Therefore the confirmation of Congress
40 was of the grant as made by Mexico to Maese and his associates—no more and no less. 40

What, then, is the character and extent of the grant? The brief statement in this respect found in the surveyor's report, hereinbefore quoted, does not furnish the answers to these questions, so that the papers transmitted by that officer to Congress, and upon which he based his recommendation, must be examined more at length.

From these papers (and their translation as found in Executive Document No. 14, supra, having been acted upon by Congress, will be accepted by this Department) it appears that on Mrach 30, 1835, Juan de Dios Maese, Miguel Archuleta, Manuel Duran, and Jose Antonio Cassaos, "for themselves and in the name of twenty-five men," presented a petition to the corporation of San Miguel del Bado, wherein it was stated that, having registered a vacant piece of land known as Las Vegas (the Meadows) on the Gallinas River, the same was solicited—

> For the purpose of planting a moderate crop; to have also the necessary land for pasture and watering places, and having the following boundaries: On the north, the Satello River; on the south, the boundary of the grant made to Don Antonio Ortiz; on the east, the Aguage de la Zegua, and on the west the boundary of the grant to San Miguel del Bado. Possession was to be received "in the name of the federation" on such conditions as might be established and would tend to "the advancement of agriculture and the well-being of several families without occupation" who were interested. (P. 27, ibid.)

This petition was referred to the territorial deputation, which, on March 23, 1835, resolved as follows:

> The land contained within the boundaries expressed in this petition is granted, not only to the petitioners and the residents of El Bado, but also generally to all who may be destitute of lands to

cultivate, provided "that the grant to these lands is made on condition that the pasture and watering places are free to all."

This resolution was ordered to be forwarded to the political chief, who was directed to cause the same to be carried into execution. This officer, F. Sarracino, in transmitting the action of the territorial deputation to his subordinate officer, the constitutional justice, who was to deliver possession, advised him to consider that the grants are to be made according to the means of each one of the petitioners, in order that they may not leave any land which may be given to them without cultivation.

It was also suggested that a site for a town to be built by the settlers should be selected and such other steps taken as might promote their security. (P. 29, ibid.)

The constitutional justice, Jose Jesus Ullibarri, certifies that on April 6, 1835, he proceeded to the town of Nuestra Senora de los Dolores de las Vegas, presumably the selected site for the proposed town, for the purpose of distributing the lands to the twenty-five individuals mentioned in the petition or any others without lands or occupations who might present themselves. He says he measured
41 41 the lands and made the distributions "according to that portion
of the colonization law which refers to grants of the public lands," the directions of the territorial deputation, and the decree of the political chief. Each individual received a piece of land according to his means, with the understanding that none should remain uncultivated, no one should sell his lands until title was acquired as prescribed by law to all colonies, and the water and pastures were to be free to all. A list of thirty-one names accompanies this certificate, containing the names of the parties for whom the lands were set aside and the quantity thereof within as well as without the new town (p. 31, ib.). On June 11, 1841, another list was returned, showing the distributions made to one hundred and eighteen other parties. On November 20, 1846, another distribution was made to twenty-nine other parties. Subsequently a further distribution was made to six parties of tracts formerly assigned, but which had not been cultivated according to agreement. In these lists appear the names of three of the four original petitioners for the grant to whom allotments were made, as follows: To Juan de Dios Maese, 250 varas; Manuel Duran, 175 varas, and Miguel Archuleta, 1,067 varas.

From the before-recited matters taken from the record I am satisfied that the grant in question was not a grant in fee simple of the lands within the described boundaries to Maese and his associates. Indeed, so far as the record disclosed, no such claim or pretension was ever set up until late years, when the same was presented by Mr. Millhiser in behalf of himself and others who claim to have derived from title from the original petitioners.

Evidently such a grant was not contemplated by the territorial deputation when it declared that the land was granted "not only to the petitioners and residents of El Bado, but generally to all who may be destitute of land to cultivate." Evidently it was not understood that such a grant had been when the acting governor, Sarracino, instructed his subordinate that the grant was to each according to his means, and that no more land was to be allotted than each could cultivate. The constitutional justice did not understand it to be such a grant when from time to time he distributed portions of the land to such as made application to him and placed them in possession of their allotments to the number of two hundred; and it may be safely assumed that the original petitioners did not regard it as a grant to themselves alone, inasmuch as three of the four named accepted allotments from the constitutional justice, and if the others did not accept allotments likewise they made no protest or objection to what, if Mr. Millhiser's theory be correct, they must have regarded as the unwarranted action of the officers in assuming to divide up and deliver possession of land to which the Government had granted them exclusively a fee-simple title; and it is shown by the report of Special Agent Rice of August 24, 1889, that after the allotments were made to settlers the Mexican authorities made four other grants, more or less extensive, outside of the allot'ed land, but inside of the exterior boundaries of the Las Vegas grant. The surveyor-general did not regard it as a grant to the parties 42 originally named because so far as he recommended its confirmation, it was to the town of Las Vegas, and finally Congress, the control'ing power in the matter, confirmed the grant to that town, which unquestionably would not have been done if it had been thought that the fee simple had been passed under the grant to the petitioners. The contemporaneous and long-continued construction by the officers of the law is entitled to have much weight, whilst the action of Congress is conclusive.

In addition to these matters there has been a judicial judgment passed upon the claim of Millhiser, which, though not conclusive in the premises, is highly persuasive so far as it goes.

On August 20, 1887, Millhiser et al., trading as the Las Vegas Land and Cattle Company, filed a bill in the district court of San Miguel County, New Mexico, against Padilla et al., wherein the title of the original petitioners for the grant now set up before this department was made the basis for asking the district court to perpetually enjoin the defendants from maintaining an inclosure upon or otherwise interfering with the complainants' full enjoyment of the lands within the Las Vegas grant in which they claimed an undivided ownership by virtue of mesne conveyances from some of the alleged original grantees or their legal representatives. It is not necessary to go into further details regarding that case, as they are fully shown in the pamphlet copies thereof and the proceedings therein found in this record. It is sufficient to say here that the question of the Millhiser title was fairly presented and fully passed upon by the court adversely to his claim, as will be seen by the following extract from the opinion of the court as delivered by Chief Justice Long:

"It is clear to my mind from the record that the Government of Mexico in making this grant desired and intended to populate her public lands; that she intended to give in fee to each settler on the Las Vegas grant all the land he could cultivate, which, after actual cultivation for a period of years, would become his to do with as he should please; that tracts of land were by the constituted authorities to be from time to time distributed to other settlers as they might

make application, and that each subsequent distributee held under the original grant and under his possession and allotment. It is not proven that the petitioners were men of large capital, intending at their own expense to colonize families and settle and maintain them on the grant. They were, evidently, poor persons and of but modern' means, seeking homes for themselves and families as a means of subsistence and desiring the settlement of other persons near them as a means of building up the town of Las Vegas for a protection against the hostile Indians. Each new settler constituted one more arm of strength for protection and additional aid for the upbuilding of the settlement and new town, and naturally was welcomed for the aid he gave to the common cause. In my opinion the *p*thought of exclusive ownership of the whole grant by these petitioners was never entertained during the jurisdiction of the Mexican Government, but
to the contrary, the decree of the provincial deputation, the
43 distribution under official authority of different tracts to sep-
arate individuals for ten years after the date of the grant, the
43 acts and qualified possession of the settlers, all show the land unoccupied to be held for the benefit of all who might come destitute of land to make settlement."

Entertaining these views, the court made a decree that the complainants be forever barred and prohibited from disturbing the defendants in the quiet enjoyment of the lands in controversy or from instituting any suit against them in that behalf. It does not appear that any appeal was taken from said decree, which is stated by the judge to have been accepted by the complainants as a condition on which they were permitted to have this bill dismissed.

In a brief filed here on October 16, 1890, Mr. Millhiser indulges in a criticism more personal in its animadversions upon the judge who delivered the opinion in said case than logical in its arguments against the correctness of his judgment. It is stated, however, in said brief that there was an earlier case decided in the same court, wherein the validity of the title which Millhiser represents was upheld and a copy of the record in the case referred to was filed.

An examination of that record shows that on March 15, 1873, a bill was filed in the district court of the San Miguel County, New Mexico, by Miguel Romero y Baca and others, who claimed to be heirs or legal representatives of the original grantees and owners of the Las Vegas grant. The bill sets forth in substance that at a public meeting held in the court-house of the town of Las Vegas, May Hayes and two associates were appointed commissioners to partition and divide up the said grant among themselves and others, not being of the number of the original grantees, their heirs or assigns, and that the said commissioners proceeded to and did partition and divide out to persons desiring the same parcels of the vacant and uncultivated portions of said grant, and have declared their intention to continue making such divisions and allotments, which action, it is alleged, will be to the irreparable injury of complainants, and an injunction is prayed restraining said parties from proceeding further to divide said lands or taking possession of those so divided.

An answer was filed by Hayes and his associates, wherein, briefly stated, they admit that they were *q*cting as commissioners, as stated;

that the grant was confirmed to the town of Las Vegas, and in pursuance of the provisions of the same and by the authority of the people of town they proceeded to distribute the vacant lands to inhabitants of town who were destitute of lands, and that in so doing they acted in good faith and were carrying out the letter and spirit of the grant. The answer admits that claimants have a legal interest in said grant, but den*y* that they have been authorized to act in the premises in behalf of any considera'l*y* number of the owners of said grant.

On the bill and answer and after argument on March 14, 1874, the opinion of the court was filed, which is as follows:

This cause coming on to be heard upon the bill of complaint filed herein and upon the answer and amended answer of the defendants,
upon reading said bill, answer, and amended answer, and after
44 hearing Mr. Catron, of counsel for the complainants, and Mr.
Houghton, for the defendants, and due deliberation being 44
thereupon had, the court finds and determines that the said defendants, May Hayes, Juan Romero, and Miguel Garcia y Chaves, had no legal right or authority to concede or donate to any person or persons whomsoever or to any corporation any of the unoccupied lands comprised within the limits of the Las Vegas grants described and set forth in the pleadings, and that their assumption of such right and authority in the manner stated in the pleadings tends to the prejudice and injury of the rights and interests of the complainants in said grant.

Whereupon it was decreed that the said parties be perpetually enjoined from proceeding further to partition and concede said land or any part thereof.

It is obvious from the foregoing statement, which I think a fair one of the contents of the record, that the judgment of the court was correct in holding that the alleged commissioners had no proper right or authority to divide and distribute th*a* lands as they were doing, and, inasmuch as it was conceded by the answer that complainants had "a legal interest in the lands of said grant," the court might with propriety hold that the illegal assumption of authority "tends" to the prejudice of complainants and prohibit' further action in that respect; but the court does not decide or pretend to decide what are the rights or the title of the complainants in and to the lands within the Las Vegas grant.

But even if the decision went to the extent claimed by Mr. Millhiser it would not affect the judgment I have formed in the premises, inasmuch as it is the reasoning by which Chief Justice Long arrives at his conclusions, which is p*e*rsuasive in my mind, whilst in the record of the earlier case referred to by Mr. Millhiser there is only the bill, answer, and order of the court granting the injunction, as above given.

I am, therefore, of the opinion *of* the matters hereinbefore set forth are sufficient to justify the rejection of the Millhiser claim for patent.

Having arrived at the conclusion that the grant as made to Maese and his associates was not a*b* absolute grant of the land within the described limits, I can not see how the confirmation of the same grant

to the town of Las Vegas in the absence of some positive expression to that effect can be construed to give to that town any larger estate than was originally granted. This grant is totally unlike those in Tameling v. United States Freehold Co. (93 U. S., 644) and the Maxwell grant case in 121 U. S., 325. Juridical possession had been delivered to the grantees in both of those cases by the Mexican authorities, and the surveyor-general recommended their confirmation as absolute grants, and as such they were confirmed. Here there has been no juridical possession of the entire tract to anyone, only of small portions to certain parties. The surveyor-general has not found the grant to be an absolute one to the town and did not recommend its confirmation as such; and it would seem that in the absence of some clear legislation to that effect it would be a
45 dangerous construction of language to hold that all the lands within the described limits of the grant were confirmed
45 absolutely to the town of Las Vegas. If the confirmation was in fee simple to the town of all the land within the bounds, it would necessarily include those lands occupied by Mexican and other settlers, who hold no evidence of title under confirmed grant, as well as those lands which, being unoccupied, belong to the United States. It is not believed that Congress proposed to enact such injustice. Indeed, the report of the Senate committee, p. 4, supra, expressly disclaims such purpose, for, after stating that the land is occupied by some several hundred families, it says that it is the duty of Congress to legislate in such a manner as to prevent, if possible, so disastrous a result as the plunging of an entire settlement into litigation at the imminent hazard of being turned out of their homes, etc.

Nor should we transfer by doubtful implication so large a body of public land to a supposed confirmee. The rule is well settled that in case of doubtful construction it must be solved in favor of the Government. In this case I do not feel myself justified, by anything I can find in the act of Congress or the papers, in acquiescing in the claim of the town of Las Vegas, which asserts that Congress confirmed to that town the absolute fee-simple title to all the lands within said grant.

The papers in the case show that the entire tract embraced within the boundaries as described in the grant papers constitutes an area of nearly 500,000 acres, of which amount about 6,000 was taken out and occupied by settlers at the time the Territory of New Mexico came under the control of the United States Government and its laws.

My opinion is that Congress intended to confirm the titles of these settlers and occupants to the lands thus assigned and occupied by them within the town of Las Vegas or outside of it, within the prescribed boundaries of the grant as originally made, and the confirmation was made direct to the town, not only as the most convenient form of making said confirmation and issuing patent thereon, but because the town of Las Vegas, acting in the interests and for the *bebenf* of its people, was the proper party to ask for and receive from Congress the relief sought.

The setting apart of this large body of public land for those who, being destitute of land, might obtain a portion thereof on application, if a grant or contract at all on the part of the Mexican Government, was at most a grant in futuro, dependent upon the performance of conditions precedent; as a contract it was executory in its nature, and consequently, so far as the conditions were unp*re*formed or the contract was unexecuted when the United States acquired the territory in which the land lay, its laws superceded those of Mexico, and thereafter, though private rights would be respected, the unassigned lands could only be acquired in accordance with the provisions of our land laws, not those of Mexico.

Entertaining these views, a resurvey should be made so as to
include only the lands which had been allot'ed or assigned to settlers
under the terms of the original concession at the time that
46 the Territory of New Mexico became subject to the laws of
the United States, and a patent for said lands should be issued
on said survey to the town of Las Vegas, so that the proper parties 46
in interest could perfect their titles to their lands. The public surveys should be extended over the residue of said lands and the same thrown open under the general land laws.

The conclusion as to patent arrived at herein seems somewhat to conflict with the views of my predecessor in the Anton Chico case, reported in 1 L. D., 287 (rev. ed.). I have not the entire record in that case before me, and the opinion does not disclose the facts sufficiently to enable me to determine whether they are identical in the two cases; but even if they are the same I believe it to be my plain duty to cause the patent to issue in the name of the Congressional confirmee, the town of Las Vegas, rather than to other parties not named as confirmees.

As to the point that the town of Las Vegas, not having been incorporated, is a legal nonentity to which no title would pass under the patent, it may be replied that if this be true, as matter of fact and law, the consequences would be more far-reaching, for Congress in its wisdom confirmed the grant, as shown, to the said town, and if there be no such town in existence which can take there simply been no confirmation of the grant, and nobody is as yet entitled to a patent; but I do not understand this to be the law of this case.

Under the Mexican system originally the people were required, for self-protection and other reasons, to live in towns whilst cultivating outlying lands, and the general laws of that country gave to such towns or pueblos four square leagues of land for the use of the inhabitants thereof, and occasionally, by special concession, as in the present instance, grants of larger area were made for the same purpose. None of these towns were ever incorporated, in the sense in which we use the terms, so far as my research has gone.

They were aggregations of people who lived together for mutual protection, and under the laws and customs of that country had officers for the administration of their municipal affairs, but there was no actual charter, no act of incorporation conferred by the superior power of the State, only the implication, arising from the re*go*cnition of the exi*a*tence of such towns, with authority to guide their own affairs.

This was the *t*condition of things when New Mexico was acquired by the United States, and the legal status of these towns and their capacity to take as confirmees of grants of public lands have been recognized in too many instances by Congress and the Executive Departments through too long a period of time to be now seriously questioned.

In the case under consideration the town of Las Vegas was not in existence at the time the original grant was asked for by Maese and his associates. One of the purposes for which the concession was made was to establish that town, and it was established after the manner and under the laws of Mexico and has had an actual existence ever since. Congress recognized its legal and actual existence,
ignored the original petitioners for the grant, and confirmed
47 it to the town, and to that extent made a change in the trus-
47 tee. In view of all this it is too late now to say that Las Vegas has no legal existence. If a corporate capacity be necessary to enable the town to take under the grant, every presumption must be that it has the necessary corporate capacity, and the law so implies. (Dillon on Municipal Corporations, par. 21 and 22.) At all events, the town having an actual existence, this Department will not now challenge its capacity to take what Congress clearly intended to give. If error be committed in following this course, that error can be redressed in the proper judicial tribunal. In the absence of a judicial construction otherwise the Executive must follow the act of Congress as read and understood.

As to the question asked relative to the declaration in the grant making the "pasture and watering places free to all," I do not thin*g* the Department is properly called upon to answer it, as the judicial tribunals of the country are the proper ones to which those holding lands under the grant *shoul* should appeal for protection against the invasion of their rights, if they have any, and not to this Department in the administration of the land laws.

EXHIBIT N.

Private Land Claims No. 20, New Mexico.

1704–1894. E. F. B. J. I. P. J. I. P.
I. J. H.

DEPARTMENT OF THE INTERIOR,
Washington, May 16, 1894.

In re Las Vegas land grant.

The Commissioner of the General Land Office.

SIR: By letter "D," of February 17, 1894, your office transmitted to this Department the application of the county commissioners of San Miguel County, New Mexico, acting for and in behalf of Las Vegas, for a review, reconsideration, and reversal by this Department of its decision of December 5, 1891 (13 L. D., 646), or so much thereof as passes on the extent of the grant which was confirmed to the town of Las Vegas by section 3 of the act of June 21, 1860 (12 Stat., 71).

The application in question is upon the ground that the question of the extent of the grant was not in issue in the case when it was before this Department in 1891, and that Secretary Noble, on his own motion, as it were, raised and passed on that question; that the only issue then in the case was to whom patent should issue.

An examination of the decision sought to be reviewed discloses the following facts:

That Surveyor-General Julian had recommended a resurvey of said grant, which, if made, would reduce its area from near 500,000 to about 6,000 acres; that one P. Millhiser, appearing for petitioners and claimants under original grantees, filed a protest against
48 said resurvey and asked that patent issue to grantees named in the original grant. This applicant filed a petition or 48
application that patent be issued to the town of Las Vegas and delivered to this applicant as custodian, and the Commercial Club of Las Vegas asked that patent issue according to the confirmatory act of Congress, &c.

The question of extent of the grant was squarely presented by the resurvey recommended by Surveyor-General Julian and by the protest of Millhiser against said resurvey. This applicant was a party to the proceeding. The fact that it saw fit to ignore that issue or did not raise it by its own application for patent, but addressed itself to the single question of to whom patent should issue, does not alter the fact that such a question was in issue in that proceeding and that it is res adjudicata "under the general doctrine that a decision by a competent tribunal reaches not only points upon which decision was actually required under the issues between the parties, but any point to which properly belonged to the issue which the parties might by reasonable diligence have litigated," or that "where the same matter has been actually tried or so in issue that it might have been tried it is not again admiss*a*ble." (1 Otto, 526; 4 Sawyer, 42; 88 Otto, 61; Moon vs. Harris, 2 L. D., 595; Francis Palms et al., 7 L. D., 146.)

This motion, therefore, contains no merit, in that it presents no question not considered in the decision sought to be reviewed.

A motion for the review of the decision of December 5, 1891, supra, was overruled on substantially the same grounds. (15 L. D., 58.)

But even were the motion a meritorious one it comes too late. Rule 77 of rules of practice requires such motion to be filed within thirty days from notice of the decision sought to be reviewed.

For the reasons stated the motion is denied, and patent will issue as indicated in the decision of December 5, 1891, supra.

The papers in the case are herewith returned.

Very respectfully,

HOKE SMITH, *Secretary.*

Supreme court of the District of Columbia.

JEFFERSON RAYNOLDS ET AL. *vs.* HOKE SMITH, SECRETARY OF THE INTERIOR, et al.	Equity. No. 16227.

Stipulation.

It is hereby stipulated that the two amendments to the bill filed by plaintiffs in this case shall be incorporated and printed in and read as a part of the original bill in equity.

ALPHONSO HART,
Solicitor for Pl'ffs.
JOHN J. HALL,
VIVIAN BRENT,
For Def'ts.

49 49 (Copy.)

In the supreme court of the District of Columbia.

JEFFERSON RAYNOLDS ET AL. *v.* HOKE SMITH, SECRETARY OF THE INTERIOR; Silas W. Lamoreux, Commissioner of the General Land Office.	In equity. Demurrer.

The defendants, by protestation, not confessing or acknowledging all or any of the matters and things in the bill of complaint to be true in manner and form as therein alleged, do jointly and severally demur thereto, and for cause show:

1st. That the survey of the Las Vegas grant complained of was properly ordered to be made by the predecessor in office of the defendant Hoke Smith, who, when he refused to revoke the said order of his predecessor, acted within the discretion conferred upon him by law as Secretary of the Interior in relation to the disposal of the public lands and of private land claims, which discretion, disposal, and supervision this court can not control or interfere with in manner and form as prayed in the bill.

2nd. That it was the duty of the Secretary of the Interior to cause a patent to be issued for the said Las Vegas grant, the same having been confirmed by Congress; and, in order to discharge that duty intelligently, it became necessary for a survey of said grant to be made so as to ascertain the area and extent of the grant as confirmed, and in the discharge of this duty it was proper for the Secretary to give instructions as to how said survey should be made so as, in his judgment, properly to comply with the requirements of law, and his judgment so formed and orders issued to carry the same into effect are not subject to the review and control of this court in manner and form as prayed in said bill of complaint.

3rd. That the alleged survey of 1860 never was approved by the Commissioner of the General Land Office or Secretary of the Interior, as is necessary before the same becomes conclusive, and the beneficiaries under the grant are entitled to patent, but the same, after being returned to the Commissioner of the General Land Office, remained suspended there, awaiting the proper action of the authorities, it being the practice of the officers of the private land claims division of the General Land Office not to take action on such surveys unless the same are specially called up, and when said survey was called up and investigated by the Commissioner of the General Land Office he recommended that the same be rejected and a new one made, which recommendation, after due consideration, Secretary Noble approved and ordered the survey herein complained of, as he in his discretion lawfully might do under the authority of law, and which order of survey the defendant Hoke Smith refused, in the exercise of his best judgment, to revoke, which discretion and judgment this court is powerless to control or set aside in 50
manner and form as prayed.

50 4th. That the defendant Lamoreux, as Commissioner of the General Land Office, is the subordinate officer of the Secretary of the Interior, and as such subordinate is bound to obey all lawful directions of his superior officer, and this court has no authority to enjoin him from obeying such orders.

5th. That all action taken by said Lamoreux in the premises and complained of in the bill were so taken in pursuance of the lawful orders and directions of the Secretary of the Interior, and this court is without jurisdiction to amend or countermand the same.

6th. That the survey of the Las Vegas grant ordered by the Secretary of the Interior and now being made by the officers of the Land Department is a correct and proper survey in accordance with the provisions of the act of Congress confirming said grant "as recommended for confirmation" by the surveyor-general of New Mexico; and this proceeding is an indirect attempt to appeal from the decision of the Secretary of the Interior in that respect, that this court may revise and reverse the judgment of the Secretary, which it is not competent for this court to do in manner and form as herein sought.

Wherefore, and for divers other errors and imperfections, these defendants demand judgment of this court whether they shall be compelled to make any other or further answer to said bill or any other matters and things therein, and pray to be hence dismissed with their reasonable costs in that behalf sustained.

And the undersigned, counsel in said cause, hereby certify that in our opinion the aforegoing demurrer is well founded in law and contains sufficient reasons for refusing the injunction asked for.

John I. Hall,
Vivian Brent,
For Defendants.

Washington, D. C., *ss:*

On this 12th day of April, 1895, personally appeared Silas W. Lamoreux, who, being duly sworn, declares that the aforegoing demurrer to the bill of complaint of Jefferson Raynolds is not interposed for delay.

SILAS W. LAMOREUX.

Sworn before me this 12th day of April, 1895.

WM. H. DE LACY,
Notary Public.

(Endorsed:) 16227. Raynolds & al. v. Smith & al. Copy of demurrer for Mr. Hart.

51 51 Filed January 4, 1896.

In the supreme court of the District of Columbia.

JEFFERSON RAYNOLDS, FOR HIMSELF AND the other inhabitants of the town of Las Vegas, in New Mexico, and of the Las Vegas grant, and the town of Las Vegas, plaintiffs, *vs.* HOKE SMITH, SECRETARY OF THE Department of the Interior, and Silas W. Lamoreaux, Commissioner of the General Land Office of the United States, defendants.	Equity. No. 16227.

This cause came on to be heard upon the demurrer of the defendants to the plaintiffs' bill of complaint and was argued by counsel, and thereupon, upon consideration thereof, the court finds and holds that the facts stated in said bill entitle the plaintiff to the relief prayed for, and that said demurrer is not well taken. It is therefore ordered and adjudged that the said demurrer be, and is hereby, overruled.

And the cause coming on further to be heard and the defendants not wishing to answer or further plead to said bill and no answer or other pleading being filed, thereupon, upon consideration thereof, it is found, ordered, adjudged, and decreed as follows:

That the lands contained in what is known as the Las Vegas grant, being the same lands surveyed by order of the Commissioner of the General Land Office in 1860 and containing 496,446.96 acres, and as set forth in the map and plat attached to the said bill of complaint, does not belong to the United States; that the United States 52 has parted with all interest therein; that by the action of the Government of Mexico in 1835 granting said lands to Juan de Dios Maese and others, the action and decision of the surveyor-general of New Mexico, and the act of Congress of June 21st, 1860, all the lands contained in said grant to the full extent of its boundaries, as shown by said survey, were absolutely and unconditionally confirmed to the said town of Las Vegas, and that said town became and is the absolute owner thereof in fee; that the defendants have no jurisdiction over said lands, and the survey now in progress not being for the purpose of ascertaining the amount of land contained in said grant or determining its boundaries or correcting any errors in the former survey, but for the purpose of taking from the grant a large part of the lands contained therein, the said defendant, Hoke Smith, Secretary of the Interior, and the said defendant, Silas W. Lamoreaux, Commissioner of the General Land Office, their subordinates, agents, and employés, are hereby forever enjoined from carrying out the decision of said John W. Noble, late Secretary of the Interior, or their own orders made in respect thereto, and from any and all attempts to complete their survey now in progress or to turn 52 back said lands or any part thereof to the public domain or in any manner interfering with said lands or the right and title of the plaintiff, and that all cloud upon said title be removed and the same be quieted and held to be good and indefeasible title in and to the town of Las Vegas.

From the above and foregoing decree the defendants, by their counsel, in open court, pray an appeal to the court of appeals of the District of Columbia, which is allowed by the court.

E. F. BINGHAM, *C. J.*

Filed January 23, 1896. 53

In the supreme court of the District of Columbia.

JEFFERSON RAYNOLDS ET AL.
vs.
HOKE SMITH, SECRETARY OF THE Interior, et al.
No. 16227. Equity.

I hereby agree that the foregoing printed matter, 50 pages, may be used for the record for hearing on appeal in the court of appeals of the District of Columbia. I also waive the issuance and service of a citation in above-entitled cause.

ALPHONSO HART,
Sol. for Complainants.

Supreme court of the District of Columbia. 54

UNITED STATES OF AMERICA, *District of Columbia, ss:*

I, John R. Young, clerk of the supreme court of the District of Columbia, do hereby certify the foregoing pages, numbered from 1 to 53, inclusive, to be a true and correct transcript of the record in cause No. 16227, in equity, wherein Jefferson Raynolds, for himself, &c., is plaintiff, and Hoke Smith, Secretary of the Department of the Interior, and Silas W. Lameraux, Commissioner of the General Land Office of the United States, are defendants, as the same remain upon the files and records of said court, under the stipulation of counsel filed January 23d, 1896.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 25th day of January, A. D. 1896.

JOHN R. YOUNG, *Clerk.*

[Seal supreme court of the District of Columbia.]

(Endorsed on cover:) District of Columbia supreme court. No. 536. Hoke Smith, Secretary, &c., et al., appellants, vs. Jefferson Raynolds, for himself, et al. Court of appeals, District of Columbia. Filed Jan. 27, 1896. Robert Willett, clerk.

53 MONDAY, *April 27th, A. D. 1896.*

HOKE SMITH, SECRETARY OF THE DEPARTMENT OF the Interior, and Silas W. Lamoreaux, Commissioner of the General Land Office of the United States, appellants,

vs.

JEFFERSON RAYNOLDS, FOR HIMSELF AND THE OTHER inhabitants of the town of Las Vegas, in New Mexico, and of the Las Vegas grant, and the town of Las Vegas.

No. 536.

The argument in the above-entitled cause was commenced by Mr. J. I. Hall, attorney for the appellants, and was continued by Mr. Alphonso Hart, attorney for the appellees.

TUESDAY, *April 28th, A. D. 1896.*

HOKE SMITH, SECRETARY OF THE DEPARTMENT OF the Interior, and Silas W. Lamoreaux, Commissioner of the General Land Office of the United States, appellants,

vs.

JEFFERSON RAYNOLDS, FOR HIMSELF AND THE OTHER inhabitants of the town of Las Vegas, in New Mexico, and of the Las Vegas grant, and the town of Las Vegas.

No. 536.

The argument in the above-entitled cause was concluded by Mr. Vivian Brent, attorney for the appellants.

54 HOKE SMITH, SECRETARY OF THE DEPARTMENT of the Interior, and Silas W. Lamoreaux, Commissioner of the General Land Office of the United States, appellants,

vs.

JEFFERSON RAYNOLDS, FOR HIMSELF AND THE OTHER inhabitants of the town of Las Vegas, in New Mexico, and of the Las Vegas grant, and the town of Las Vegas.

No. 536.

Opinion of court.

Mr. Chief Justice ALVEY delivered the opinion of the court:

The bill in this case was filed in the supreme court of the District of Columbia on the 15th of February, 1895, by Jefferson Raynolds, for himself and the other inhabitants of the town of Las Vegas, in the Territory of New Mexico, and of Las Vegas grant, and the town of Las Vegas, against Hoke Smith, Secretary of the Department of the Interior, and Silas W. Lamoreaux, Commissioner of the General Land Office of the United States, to obtain an injunction to restrain the defendants from directing the execution of an order for the survey of Las Vegas grant, or from in any manner treating the land included therein as part of the public domain.

The bill states the history of the grant from the Republic of Mexico in 1835 to Juan Dios Maese, Miguel Archuletta, Manual Duran, and José Antonio Casaos, for themselves and in the name of 25 men, for the cultivation of crops and for pasture and watering places, etc., and which grant was made with definite boundaries, and by subsequent survey, made under the authority of the United States, in 1860, was ascertained to contain 496,446.96 acres of land.

The bill was demurred to by the defendants, and the demurrer having been overruled, and the defendants electing to stand upon their demurrer, the court proceeded to declare and decree that the defendants, as Secretary of the Department of the Interior, and as Commissioner of the General Land Office, respectively, had no jurisdiction over the lands embraced in Las Vegas grant; and that the survey then in progress, not being for the purpose of ascertaining the amount of land contained in said grant, or determining its boundaries, or for correcting any errors in the former survey, but for the purpose of taking from the grant a large part of the lands contained therein, and subjecting it to the control of the Land Department of the Government as part of the public domain, they were, therefore, enjoined and restrained from the further execution of the survey of the grant as being wholly unauthorized by law. It is from this decree that the present appeal is taken on the part of the Government of the United States.

All facts properly alleged are admitted by the demurrer, but not all legal conclusions that the pleader may have drawn therefrom. The legal construction of the matters of fact alleged is exclusively for the court. And so the construction and effect of all acts of Congress involved is for the court and also the official acts of Government agents and officers acting thereunder.

It appears from the allegations of the bill that in 1821 the Mexican authorities granted to Luis Maria de Baca and his seventeen male children the tract of land that was subsequently granted to the parties named in the grant of Las Vegas. This original grant to Baca was described by the same boundaries that were named in the subsequent Las Vegas grant; and Baca entered into possession and was in the enjoyment of his grant when he was disturbed by hostile Indians, and was compelled to vacate his possession at great loss. After this grant to Luis Baca the Mexican Congress, by an act of 1824, passed what has been known (and often recognized in our courts) as the colonization law, providing for the colonization of the territories of the Republic; and that at the time of the passage of that law New Mexico was a Territory of the Republic, and so continued until December 30, 1836; when it became a department. By virtue of the act of 1824 a code of colonization was adopted in 1828, which contained regulations for the colonization of the territories of the Republic, whereby the political chiefs or governors of the territories were authorized to grant the public lands of their respective territories to contractors, families, or private persons, Mexicans or foreigners who might apply for them, and were directed, when a grant was definitely made,

to sign and give a document to serve as a title to the party in interest, it being stated therein that the grant was made in entire conformity with the provisions of the law, in virtue of which the possession should
55 be given. (United States *v.* Chaves, 159 U. S., 452, 458.) It appears that it was by virtue of this colonization act and the regulations made thereunder that the grant to Juan Dios Maese and others was made in March, 1835, with certain defined boundaries, and that the grantees were duly and formally placed in possession of the land granted, as required by law. It is alleged that the settlement thus established in 1835 has grown and increased until at the present time more than 3,000 families are located upon the grant, and that there is a population of about 20,000 inhabitants thereon; and that these people are the original settlers or their descendants, and others who came upon the lands under the grant, and all hold under the terms thereof; and that they have made these lands their homes, and have cultivated them and erected valuable improvements thereon.

No particular form of patent or grant appears to have been prescribed either by the act of 1824 or the regulations of 1828, and no formal grants seem to have been required to convey and vest title under the Mexican law. (U. S. v. Larkin et al., 18 How., 558, 563.) The chief object of these grants, or cessions, as said by the Supreme Court in reference to the Mariposa grant of land in the Territory of California (Freemont v. United States, 17 How., 561), "was to colonize and settle the vacant lands. The grants were usually made for that purpose, without any other consideration, and without any claim of the grantee on the bounty or justice of the Government. But the public had no interest in forfeiting them even in these cases, unless some other person desired and was ready to occupy them, and thus carry out the policy of extending its settlements." The grant of Las Vegas, made in 1835, was found by the surveyor-general of New Mexico, in 1858, and subsequently by Congress, in 1860, to have been in all respects regular and formal, according to the laws and customs of Mexico at the time the grant was made. And such being the case, we must assume that if the Territory of New Mexico had not been ceded to the United States by the treaty of 1848, the Republic of Mexico would have observed and maintained the validity of the grant to Maese and others in good faith. The United States have assumed the obligation by treaty stipulation to observe and maintain the validity of the grant in good faith, as Mexico would have maintained it.

By article 8 of the treaty of Guadalupe Hidalgo between the United States and the Republic of Mexico, made in 1848, it was expressly stipulated that Mexicans then established in territories ceded by Mexico to the United States, as defined by the treaty, should be free to continue where they then resided, or to remove at any time to the Mexican Republic, retaining the property which they possessed in the said territories, etc.; and those who should prefer to remain in the said territories might either retain the title and rights of Mexican citizens or acquire those of citizens of the United States, etc. And in the said territories property of every kind then belonging to Mexicans not established there should be inviolably respected. The then owners and their heirs, and all Mexicans who might thereafter acquire property by contract, should enjoy with respect to it guarantees equally ample as if the same belonged to citizens of the United States. And by article 9 it is further provided that pending the admission of such Territories into the Union of the United States, Mexicans who reside therein shall be maintained and protected in the free enjoyment of their liberty and property, and secured in the free exercise of their religion without restriction. These stipulations are strictly in accordance with the well-settled principles of the modern law of nations.

In the act of Congress of July 22, 1854, passed to organize a land office in the Territory of New Mexico, and also one for the Territories of Kansas and Nebraska, and providing for the appointment of surveyors-general in said Territories, by the eighth section thereof, it is provided that—

"It shall be the duty of the surveyor-general, under such instructions as may be given by the Secretary of the Interior, to ascertain the origin, nature, character, and extent of all claims to lands under the laws, usages, and customs of Spain and Mexico; and, for this purpose, may issue notices, summon witnesses, administer oaths, and do and perform all other necessary acts in the premises. He shall make a full report on all such claims as originated before the cession of the Territory to the United States by the treaty of Guadalupe Hidalgo of 1848, denoting the various grades of title, with his decision as to the validity or invalidity of each of the same, under the laws, usages, and customs of the country before its cession to the United States; and shall also make a report in regard to all pueblos existing in the Territory, showing the extent and locality of each, stating the number of inhabitants in the said pueblos, respectively, and the nature of their titles to the land; such report to be made according to the form which may be prescribed by the Secretary of the Interior; which report shall be laid before Congress for such action thereon as may be deemed just and proper, with a view to confirm bona fide grants, and give full effect to the treaty of 1848, between the United States and Mexico."

The surveyor-general of New Mexico, acting under the provisions of this act of Congress of 1854, was fully instructed by the Commissioner of the General Land Office, with the approval of the Secretary of the Interior, as to the manner of his proceeding. He was required to investigate fully all titles to claims made, and in his report to state clearly and distinctly such as were bona fide and should be confirmed, and such as were fraudulent and destitute of merit, and he was required to give his opinion as to the validity of each title, and present a map of the survey of such grants as he should deem valid. He was further instructed to deal with private land titles precisely as Mexico would have done had the sovereignty not changed, and to recognize all titles as she would have done.

It appears that the surveyor-general, upon claim made to him, both in behalf of the town of Las Vegas and of the heirs of Luis Baca, claiming adversely, and after full investigation of the titles founded upon the two grants for the same land (together with many other land claims presented and examined) made report to the General Land Office, in 1858, as to the state and condition of those titles and claims. And
56 in views of the terms of the confirmatory act of Congress passed thereon, hereafter to be more particularly referred to, it is proper

to make a somewhat extended reference to the findings of the surveyor-general in respect to the claim of the town of Las Vegas and its inhabitants, and that of the Baca heirs.

In his report, the surveyor-general first examined the facts connected with the Baca grant, and he made a full statement of those facts. He stated both the origin of the grant and the boundaries of it; and he conceded that the land claimed was the same as that covered by the subsequent grant for Las Vegas.

In his report he then stated the origin of the grant made to Maese and others in 1835 for Las Vegas, and the facts under which it was made, and the exterior boundaries thereof; and that the grant was made by the territorial deputation with the boundaries asked for, with the further provision that persons who owned no lands were to be allowed the same privileges of settling upon the grant as those who petitioned for it; and that the petitioners were duly placed in possession by the proper authority. The report then proceeds:

"But, supposing the grant made to Baca by the deputation of Durango to have been null and void, its confirmation by the territorial deputation of New Mexico in 1825, at which period it is not denied it had the power to grant lands, would be equivalent to a new grant; and as it is complete in itself so far as the severance of the land granted is concerned, to separate it from the public domain, it is a matter of very little importance whether the former grant by the deputation of Durango was valid or not. This grant is therefore deemed to be a good and valid one.

"The grant made to Juan de Dios Maese and others is not contested on the ground of any want of formality in the proceedings, but, as far as the documentary evidence shows, is made in strict conformity with the laws and usages of the country at the time."

The surveyor-general then goes on to say:

"It is firmly believed that the land embraced in either of the two grants is lawfully separated from the public domain and entirely beyond the disposal of the General Government, and that in the absence of the one the other would be a good and valid grant; but as this office has no power to decide between conflicting parties, they are referred to the proper tribunals of the country for the adjudication of their respective claims, and the case is hereby respectfully referred to Congress through the proper channel for its action in the premises."

This report was duly submitted to Congress, as it was required to be by the act of Congress of the 22d of July, 1854; and, in the Senate, it was referred to and considered by the Committee of Private Land Claims, and by that committee reported upon on the 19th of May, 1860. In the report of the committee, made by Senator Benjamin, it is said, in reference to Las Vegas grant, being No. 20 in the report—

"Amongst the claims embraced, however, in this second report, and recommended for confirmation are two which cover the same tract of land and are embraced in one number, to wit, No. 20.

"To this tract the two claimants are, first, the heirs of Luis Maria Baca, who claim under a grant made by the provincial deputation of Durango to said Baca and his 17 male children on May 29, 1821, which grant was ratified and confirmed on the February, 1825, by the departmental assembly of New Mexico. This grant was in fee, and is a genuine and valid title; and, second, the town of Las Vegas. This town claims under a grant made on the 25th March, 1835, to Juan de Dios Maese and twenty-seven others by the territorial deputation on a petition which represented the land to be public land, and the petitioners were put in possession. The land has been divided out and several hundred families are located on it.

"The surveyor-general, having none but ministerial duties to perform, has recommended the confirmation of both these titles, leaving to the respective claimants the right of adjusting their conflicting claims in the courts; but Congress has other duties imposed on it, and is bound to legislate in such manner as to prevent, if possible, so disastrous a result as the plunging of an entire settlement of families into litigation, at the imminent hazard of being turned out of their homes or made to purchase a second time from a private owner lands for which they paid their Government a full equivalent in the labor, risk, and exposure by which they have converted a wilderness, surrounded by hostile savages, into a civilized and thriving settlement, and this can be done with little loss or cost to the Government.

"The claimants under the title to Baca, also represented by Judge Watts as their counsel, have expressed a willingness to waive their older title in favor of the settlers if allowed to enter an equivalent quantity of land elsewhere within the Territory, and your committee can not doubt that Congress will cheerfully accept the proposal, which, indeed, would undoubtedly have been acceded to by Mexico if the Territory had remained hers, and to whose rights and duties the United States have succeeded.

"The committee have therefore prepared an amendment to the House bill, by way of substitute, embracing the several provisions above referred to."

The act referred to and accompanying this report of the committee was passed and became a law on June 21, 1860. By section 3 of this act it is provided, "That the private land claims in the Territory of New Mexico, as recommended for confirmation by said surveyor-general in his report and abstract marked Exhibit A, as communicated to Congress by the Secretary of the Interior, etc., and numbered from twenty to thirty-eight, both inclusive, be, and the same are hereby, confirmed, with the exception of the claim numbered twenty-six," etc. And by section 4 it was enacted, "That the foregoing confirmation shall only be construed as quitclaims or relinquishments, on the part of the United States, and shall not affect the adverse rights of any other person or persons whomsoever." And by section 6 of the act it was provided, "That it shall be lawful for the heirs of Luis Maria Baca, who make claim to said tract of land as is claimed by the town of Las Vegas, to
57 select, instead of the land claimed by them, an equal quantity of vacant land, not mineral, in the Territory of New Mexico, to be located by them in square bodies, not exceeding five in number. And it shall be the duty of the surveyor-general of New Mexico to make survey and location of the lands so selected by said heirs of Baca when thereunto required by them. Provided, however, That the right hereby granted to said heirs of Baca shall continue in force during three years from the passage of this act and no longer."

It is alleged, and conceded to be the fact, that the Baca heirs made their election under the foregoing provision of the statute, to take other lands within the time prescribed, and that such other lands were duly located and assigned to them, as directed by the act of confirmation. The town of Las Vegas, and the people settled within the limits of the grant of Las Vegas, as made to Maese and others in 1835, were thus left in the free and undisturbed possession of the land granted to them, and of their homes, with all the rights and privileges professed to be conveyed by the grant. In fact, there has been no disturbance of their possession under the grant, until the recent action of the Land Department hereafter referred to.

In order to effectuate the exchange with the Baca heirs, and thus to extinguish their claim upon the grant of Las Vegas, it was necessary that there should be a survey made of Las Vegas to ascertain the exact number of acres covered by the grant and embraced within the exterior boundaries designated. This survey was made under the direction of the General Land Office in 1860. In the letter of instruction by the Commissioner of the General Land Office to the surveyor-general of New Mexico, dated July 26, 1860, the Commissioner said: "You will proceed to have the exteriors of the Las Vegas town claim properly run and connected with the line of the public surveys. The exact area of the Las Vegas town tract having been thus ascertained, the right will accrue to the Baca claimants to locate a quantity equal to the area of the town tract elsewhere in New Mexico as vacant land, not mineral, in square bodies not exceeding five in number."

This survey was accordingly made, and the exchange effectuated, and the area of Las Vegas was ascertained to be 496,446.96 acres. A complete plat of this grant, showing a full table of the courses and distances of the outlines of the grant, as ascertained by the survey, is exhibited with the bill. The survey thus made was fully approved and acted on by the Land Department of the Government, and is of record in the General Land Office of the United States.

Now, the question is, what legal effect and operation had the treaty stipulation to which we have referred; the act of Congress of July 22, 1854; the finding and report of the surveyor-general under that act, the confirmatory act of Congress of June 21, 1860, and the extinguishment of the claim of the Baca heirs in the land covered by the grant to the town of Las Vegas, upon the claim made under this latter grant? Do not these acts of the Government of the United States, when taken together, manifest a clear design and purpose to quiet the possession and settle the title in the town of Las Vegas and its settlers and occupiers of the land, to the full extent of the original grant as made by the authority of the Republic of Mexico, and not simply to the extent only of such parcels of the land as may have been actually allotted and occupied prior to the date of the treaty of Guadalupe Hidalgo? There is nothing whatever that indicates a purpose on the part of the Government to confirm the grant only to a limited or partial extent. On the contrary, every act of the Government, both in its legislative and executive branches, repels the idea of a partial or limited confirmation; and it was not until very recently that the Land Department attempted to act upon a new theory as to the effect and operation of the grant and the extent of the confirmatory act of Congress of 1860.

In 1891, the Secretary of the Interior, Mr. Secretary Noble, in an official letter to the Commissioner of the General Land Office, in regard to the Las Vegas grant, after referring to the acts of Congress, proceeded to discuss the question of the construction of the grant and the effects of the acts of Congress; and he concluded that Las Vegas grant was not a grant in fee to the applicants therefor or to the town of Las Vegas within the described boundaries, but a concession of separate tracts to settlers and occupants, and that the act of June 21, 1860, confirmed the title to lands thus assigned and occupied within the prescribed boundaries of the original grant, whether within the town of Las Vegas or outside of the same, and that a resurvey of this grant should be made so as to include only the lands allotted or assigned to settlers under the terms of the original concession at the time the Territory of New Mexico became subject to the laws of the United States, and a patent should issue on such survey to the town of Las Vegas for the benefit of the proper parties having thus shown themselves entitled; and further, that the lands not included in such survey of actually allotted and assigned lands within the boundaries of the grant should be surveyed as public lands and opened to disposition under the general land laws.

This construction of Secretary Noble, while not in terms concurred in by the present Secretary of the Interior Department, the latter does not appear to dissent therefrom; and it is alleged in the bill that the Commissioner of the General Land Office, with the approval and by the direction of the Secretary of the Interior, has directed and ordered the surveyor-general of New Mexico to proceed at once to carry out the orders of Secretary Noble, by making a survey of the lands assigned to individuals prior to 1848, so that a patent may be issued to the town of Las Vegas for these several small tracts of land, and that all the rest and residue of the lands contained in the grant be turned back as a part of the public lands of the United States. It is to restrain this proceeding that the present application is made for an injunction.

In the construction of the grant of Las Vegas, and of the confirmatory act of Congress, declared by Mr. Secretary Noble, we can not concur. As we have seen, by the act of 1854, the surveyor-general of New
58 Mexico was required to ascertain the origin, nature, character, and
extent of all claims to lands under the laws, usages, and customs of Spain and Mexico, and to report his decision as to the validity or invalidity of each of said claims, for the final action of Congress. In his report he finds and states that the grant of Las Vegas was made in strict conformity with the laws and usages of the country at the time; and that the land embraced in the grant was lawfully separated from the public domain, and entirely beyond the disposal of the General Government of the United States. The authority conferred upon the surveyor-general of New Mexico by the eighth section of the act of Congress of 1854 was of a special quasi-judicial character, and his findings and conclusions are entitled to every presumption in their favor until overcome by contrary proof. The claim as reported was confirmed by Congress, and the very object of making provision for the Baca heirs, and thus extinguishing their prior claim to the land embraced in the grant of Las Vegas, was to give full effect and operation to this latter grant. The grant of Las Vegas was confirmed in its entirety, and no part of the land was intended to be reduced to or made subject to the general regulations for the disposal of the public domain. All this was within the exclusive control and disposing power of Congress, and the courts have

no power to review the action of Congress in the premises. It is the settled doctrine of the Supreme Court of the United States that a confirmatory statute passes a title as effectually as if it in terms contained a grant de novo, and that a grant may be made by a law as well as by a patent, pursuant to law. (Ryan v. Carter, 93 U. S., 78.) And this was expressly held by the Supreme Court in respect to the confirmatory act of June 21, 1860, the act that confirmed the grant of Las Vegas. (Tameling v. U. S. Freehold, etc., Co., 93 U. S., 644, 661.)

In this last-mentioned case, the point decided was, that the action of Congress confirming a private land claim in New Mexico, as recommended for confirmation by the surveyor-general of that Territory, acting under the act of 1854, is not subject to judicial review. In the opinion of the court it is said: "The determination of this case depends upon the effect of the act of Congress 'to confirm certain private land claims in the Territory of New Mexico,' approved June 21, 1860 (12 Stat., 71). Did the act confirm the Sangree de Cristo grant to the extent of the exterior boundaries of the claim? If it did, the judgment below must be affirmed. If it did not, inasmuch as no specific portion of the land within those boundaries was severed from the remainder and confirmed to the claimant, the plaintiff below, who derives title under him, has not shown a right to the demanded premises, and the judgment must be reversed.

"We have repeatedly held that individual rights of property in the territory acquired by the United States from Mexico were not affected by the change of sovereignty and jurisdiction. They were entitled to protection whether the party had the full and absolute ownership of the land, or merely an equitable interest therein which required some further act of the Government to vest in him a perfect title. The duty of providing the mode of securing them and fulfilling the obligations which the treaty of cession imposed, was within the appropriate province of the political department of the Government." And further on in the opinion, the court say: "No jurisdiction over such claims in New Mexico was conferred upon the courts; but the surveyor-general, in the exercise of the authority with which he was invested, decides them in the first instance. The final action on each claim reserved to Congress is, of course, conclusive, and therefore not subject to review in this or any other forum. Congress acted upon the claim 'as recommended for confirmation by the surveyor-general.' The confirmation being absolute and unconditional without any limitation as to quantity, we must regard it as effectual and operative for the entire tract.

In other words, where Congress has acted in plain and unambiguous terms, and its action is definite, as to limitations of estate and extent of area, there is no power of review or control in any other department of the Government. What Congress has declared must be accepted as conclusive, in all matters relating to the disposition of the public lands, whether it be in the form of confirmation of previous grants, or the granting of land in exchange for the surrender and relinquishment of prior titles, to make good a junior or subordinate grant. Where Congress has acted in either confirming or rejecting a land claim all other jurisdictions are excluded, except where other jurisdiction is expressly conferred. This principle is shown in the act of 1891, ch. 529, entitled "An act to establish a court of private land claims, and to provide for the settlement of private land claims in certain States and Territories." By section 13 of that act it is declared that "no claim shall be allowed for any land the right to which has hitherto been lawfully acted upon and decided by Congress, or under its authority."

The comparatively recent case of the Maxwell Land Grant, 121 U. S. 325, would seem to be quite controlling in this case. That was a case arising under the confirmatory act of Congress of June 21, 1860—the act of confirmation under which the present claim is founded. In that case, it was held that the grant to the full extent of the boundaries as described in the petition of the claimants was fully confirmed by the act. The court, in deciding that case, followed the previous case of Tameling *v.* U. S. Freehold Co., supra; and, in the course of the opinion, in discussing the effect of the surveyor-general's report under the act of 1854, and of the confirmatory act of Congress of 1860, it was said:

"But as his office was a surveying office, and was designed to ascertain the location and the extent of grants by an examination of the maps and surveys, and making new surveys if necessary, a function preeminently appertenant to his office, he must be supposed to have reported upon all that was proper for consideration in its confirmation. And when the Congress of the United States after a full investigation and elaborate reports by its committees, confirmed these grants 'as recommended for confirmation by the surveyor-general of the Territory' we must suppose that it was intended to be a full and complete confirmation as regards the 59 legal validity, fairness, and honesty of the grant, as well as its extent. This is made the more emphatic by the two or three cases in which the extent and location of the grant are specially limited in the very act of confirmation included in the same section and the same sentence."

It follows from what we have said, and the authorities cited, that we are of opinion that the act of confirmation of 1860 was effective and extended to the entire limits of the grant to the town of Las Vegas and others as originally made by the authorities of the Republic of Mexico, and that no part of the land embraced within the limits of such grant forms any part of the public domain of the United States, and consequently the Land Department of the Government has no jurisdiction over it. Whether there remains in Congress a power to apportion or assign the lands within the grant among the settlers, according to the terms of the grant, is a question not presented or decided on this appeal. And clearly there is no occasion or necessity whatever for a survey of the land included in the grant, in order to separate or distinguish it from the public lands of the Government, since that was effectually done by the survey of 1860, made under the direction and with the full approval of the Land Department.

Having thus concluded with respect to the right of the complainants, there would seem to be no question of the power and jurisdiction of the courts to restrain those acting or attempting to act for and in behalf of the Land Department of the Government from doing anything that would lessen the quantity or detract from the value of the land granted, or that would obstruct in any manner the full enjoyment thereof, in the manner and to the extent contemplated by the confirmatory act of Congress of 1860. The proposed action on the part of the Land Department is purely ultra vires. There is no official judgment or discretion required to be exercised by those representing the Land Department, and no fact required to be investigated and determined by them, with respect to the rights of the complainants. In such case it has been repeatedly held that an injunction may issue. If the head of a department has no power at all to do the act complained of, he is as much subject to an injunction as he would be to a mandamus if he refused to do an act which the law plainly required him to do. (Noble v. Logging Railroad, 147 U. S. 172, and cases there cited.) In one class of cases referred to by the court in the case just mentioned, it has been held that if land attempted to be patented had been reserved, or was at the time no part of the public domain, the Land Department would have no jurisdiction over it, and no power or authority to dispose of it, and consequently the patent issued would be simply void. And in the recent case of Burfenning v. Chicago, St. Paul, etc., R. Co., 163 U. S., 321, it is laid down as settled by many previous decisions, that while in the administration of the public land system, questions of fact are for the consideration and judgment of the Land Department, and its judgment thereon is final, yet when, by an act of Congress, a tract of land has been reserved from homestead and preemption, or dedicated to any special purpose, proceedings in the Land Department in defiance of such reservation or dedication, although culminating in a patent, will confer no title. In other words, as said by the court, "the action of the Land Department can not override the expressed will of Congress, or convey away lands in disregard or defiance thereof."

In our opinion, the allegations of the bill present a clear case for remedy by injunction, and the court below committed no error in overruling the demurrer and passing the decree from which this appeal is taken. We shall therefore affirm the decree; and it is so ordered. The decree of affirmance will be entered as of June 13, 1896.

Decree affirmed.

60 WEDNESDAY, *September 30th, A. D. 1896.*

HOKE SMITH, SECRETARY OF THE DEPARTMENT OF THE Interior, and Silas W. Lamoreaux, Commissioner of the General Land Office of the United States, appellants, *vs.* JEFFERSON RAYNOLDS, FOR HIMSELF AND THE OTHER inhabitants of the town of Las Vegas, in New Mexico, and of the Las Vegas grant, and the town of Las Vegas.	No. 536. April term, 1896.

Appeal from the supreme court of the District of Columbia.

This cause came on to be heard on the transcript of record from the supreme court of the District of Columbia, and was argued by counsel. On consideration whereof it is now here ordered, adjudged, and decreed by this court that the decree of the said supreme court in this cause be and the same is hereby affirmed. It is further ordered that this decree be entered as of June 13th, 1896.

Per MR. CHIEF JUSTICE ALVEY,
September 30, 1896.

61 MONDAY, *October 5th, A. D. 1896.*

HOKE SMITH, SECRETARY OF THE DEPARTMENT OF THE Interior, and Silas W. Lamoreaux, Commissioner of the General Land Office of the United States, appellants,
vs.
JEFFERSON RAYNOLDS, FOR HIMSELF AND THE OTHER inhabitants of the town of Las Vegas, in New Mexico, and of the Las Vegas grant, and the town of Las Vegas.
} No. 536.

On motion of Mr. Vivian Brent, attorney for the appellants in the above-entitled cause, it is ordered by the court that said appellants be allowed an appeal to the Supreme Court of the United States.

62 UNITED STATES OF AMERICA, *ss:*

To Jefferson Raynolds, for himself and the other inhabitants of the town of Las Vegas, in New Mexico, and of the Las Vegas grant, and the town of Las Vegas, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to an order allowing an appeal, filed in the clerk's office of the court of appeals of the District of Columbia, wherein Hoke Smith, Secretary of the Department of the Interior, and Silas W. Lamoreaux, Commissioner of the General Land Office of the United States, are appellants and you are appellees, to show cause, if any there be, why the decree rendered against the appellants should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Richard H. Alvey, chief justice of the court of appeals of the District of Columbia, this 12th day of October, in the year of our Lord one thousand eight hundred and ninety-six.

R. H. ALVEY,
Justice of the Court of Appeals of the District of Columbia.

Service acknowledged October 12th, 1896.

ALPHONSO HART,
Solicitor for Appellees.

63 Court of appeals of the District of Columbia.

I, Robert Willett, clerk of the court of appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages, numbered from 1 to 62, inclusive, contain a true copy of the transcript of record and proceedings in said court of appeals in the case of Hoke Smith, Secretary of the Department of the Interior, and Silas W. Lamoreaux, Commissioner of the General Land Office of the United States, appellants, vs. Jefferson Raynolds, for himself and the other inhabitants of the town of Las Vegas, in New Mexico, and of the Las Vegas grant, and the town of Las Vegas, No. 536, April term, 1896, as the same remain upon the files and records of said court of appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of said court of appeals, at the city of Washington, this 12th day of October, A. D. 1896.

[SEAL.] ROBERT WILLETT,
Clerk of the Court of Appeals of the District of Columbia.

(Indorsement on cover:) Term No., 626. Hoke Smith, Secretary of the Department of the Interior, and Silas W. Lamoreaux, Commissioner of the General Land Office of the United States, appellants, vs. Jefferson Raynolds, for himself and the other inhabitants of the town of Las Vegas, New Mexico, and of the Las Vegas grant, and the town of Las Vegas. Case No. 16405. District of Columbia court of appeals. Filed October 15th, 1896.

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166-717

Office Supreme Court, U. S.
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JAMES H. McKENNEY,
CLERK.

166-717

In the Supreme Court of the United States.

October Term, 1896.

Silas W. Lamoreux, Commissioner of the General Land Office of the United States (impleaded with Hoke Smith, Secretary of the Department of the Interior), appellant,

v.

Jefferson Raynolds, for himself and the other inhabitants of the town of Las Vegas, New Mexico, and of the Las Vegas grant, and the town of Las Vegas.

No. 626.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

BRIEF FOR APPELLANT.

In the Supreme Court of the United States.

OCTOBER TERM, 1896.

SILAS W. LAMOREUX, COMMISSIONER OF the General Land Office of the United States (impleaded with Hoke Smith, Secretary of the Department of the Interior), appellant,
v.
JEFFERSON RAYNOLDS, FOR HIMSELF AND the other inhabitants of the town of Las Vegas, New Mexico, and of the Las Vegas grant, and the Town of Las Vegas.
No. 626.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

BRIEF FOR APPELLANT.

The decree appealed from was entered against Secretary Smith and Commissioner Lamoreux. Its entry as against Secretary Smith was erroneous, since he had retired from office on September 1, 1896, a fact judicially known to the court. (*Warner Valley Stock Co.* v. *Smith*, 165 U. S., 28.) Mr. Smith has joined as a party appellant in order to avoid any question under *Sipperley* v. *Smith*, 155 U. S., 86, and cases therein cited; but he has no substantial interest in the controversy, and this brief is submitted on behalf of Commissioner Lamoreux, who, by the decrees appealed from, is forever enjoined from doing what the present Secretary of the Interior, who is not a party to this suit and not legally or morally bound to follow the views of the lower courts herein, has the power to direct him to do.

Examination of the original decree herein, which has been affirmed by the court of appeals, will show that it is largely directed against the United States. The United States has never been made a party to this suit, and could not be made a party. (*Stanley* v. *Schwalby*, 162 U. S., 255.) This part of the decree is therefore absolutely nugatory.

This is an equity suit for an injunction. The bill was verified December 13, 1894, and filed February 15, 1895. A paper styled a demurrer was filed April 12, 1895. This paper contains certain allegations of fact as well as of law, namely, statements as to the practice of the General Land Office. These matters of fact, however, could have been judicially noticed by the court, and therefore add nothing to the case made by the bill, as will be shown. The paper was treated as a good demurrer, and the cause heard and decided thereon.

Complainant's original grievance was a decision of Hon. John W. Noble, then Secretary of the Interior, on December 5, 1891, holding that the so-called Las Vegas patent was not as large as it was claimed to be by the town of Las Vegas and its inhabitants, and holding that certain portions thereof should be surveyed and patented under the grant, while the rest of the land should be surveyed and thrown open under the general laws. (13 L. D., 646.) Secretary Smith in 1894 held that he had no authority to reconsider this decision, and Commissioner Lamoreux accordingly, by the Secretary's direction, ordered surveys to be made. The bill asked for an order "temporarily restraining him from the prosecution of said survey," and as a final decree (p. 10):

> That on the final hearing of this cause said order may be made perpetual, and that said defendants, their subordinates, agents, and employees, may be forever enjoined from carrying out the decision of said Secretary Noble or their orders made in respect thereto, and from any and all attempts to turn back said lands or any part thereof to the public domain, or in any manner interfering with the rights, titles, and privileges of the plaintiffs, and that their title may be quieted, and for general relief.

The case was heard by Chief Justice Bingham, of the supreme court of the District of Columbia, who made a final decree as follows (pp. 48–9):

> That the lands contained in what is known as the Las Vegas grant, being the same lands surveyed by order of the Commissioner of the General Land Office in 1860, and containing 496,446.96 acres, and as set forth in the map and plat attached to the said bill of complaint, *does not belong to the United States; that the United States has parted with all interest therein;* that by the action of the Government of Mexico in 1835 granting said lands to Juan de Dios Maese and others, the action and decision of the surveyor-general of New Mexico, and the act of Congress of June 21st, 1860, all the lands contained in

> said grant, to the full extent of its boundaries, as shown by said survey, were absolutely and unconditionally confirmed to the said town of Las Vegas, and that said town became and is the absolute owner thereof in fee; that the defendants have no jurisdiction over said lands, and the survey now in progress not being for the purpose of ascertaining the amount of land contained in said grant, or determining its boundaries, or correcting any errors in the former survey, but for the purpose of taking from the grant a large part of the lands contained therein, the said defendant Hoke Smith, Secretary of the Interior, and the said defendant Silas W. Lamoreux, Commissioner of the General Land Office, their subordinates, agents, and employees, are hereby forever enjoined from carrying out the decision of said John W. Noble, late Secretary of the Interior, or their own orders made in respect thereto, and from any and all attempts to complete their survey now in progress or to turn back said lands or any part thereof to the public domain, or in any manner interfering with said lands or the right and title of the plaintiff, and that all cloud upon said title be removed and the same be quieted and held to be good and indefeasible title in and to the town of Las Vegas.

This decree was in all things affirmed by the Court of Appeals (p. 60).

ALLEGATIONS OF THE BILL.

The bill is filed by Jefferson Raynolds and "the town of Las Vegas." Raynolds sues "in his own right and for those whom he represents, all having a common interest," stating that these persons, "who are too numerous to be made parties by name, are citizens and inhabitants of the town of Las Vegas and the territory contained in the land grant hereinafter described." There is no allegation that this town is a municipal corporation. It is alleged to be "a town located upon said grant * * * established, existing, and known *as such town* since the year 1835" (pp. 1, 2).

The property in question is alleged to have been granted by the act of 1860, hereinafter quoted, "to the town of Las Vegas and its inhabitants" (p. 7). The two plaintiffs allege that the land "never constituted any part of the public domain, but belonged *to the plaintiffs*" (p. 9), which seems to mean the town and its inhabitants; but it does not appear whether the town claims to hold jointly or in common with its inhabitants, or how, except that the inhabitants who have come on the land since 1848 are alleged to be "holding their right and title thereto under the Las Vegas grant" (p. 9). These late comers are alleged to "constitute three-fourths of the population of the grant" (p. 10).

This case turns upon the true construction and effect of a Congressional grant of 1860. That grant was evidently to some extent made under mistake. Congress supposed that under the Mexican laws somebody had a fee simple title to the property in question. It was attempting to carry out the obligations of the United States under the treaty of Guadalupe Hidalgo, and shows no intent to give any greater interest than actually existed under the Mexican law.

But there was no fee simple title to this property, nor anything even faintly resembling it (with the exception of a few lots). Assuming that the court has jurisdiction in this suit of the merits of the present controversy, it will be necessary to examine, first, the Mexican title; second, the confirmatory act; and, lastly, the proceedings under that act.

The Mexican title.—By proceedings not contained in this record, but which are fully set forth in the case of *United States* v. *Sandoval*, No. 205 of this term, the town of San Miguel del Bado (commonly called El Bado) was established in 1794. It appears to have been fully organized with a town council (*ayuntamiento*). To this council Juan de Dios Maese and three others, "for themselves and in the name of 25 men," petitioned on March 20, 1835, for a grant of land (p. 11). The petition and papers subsequent thereto are very badly printed in this record. The petition, together with a much later paper, which is misplaced, are printed as Exhibit A, and headed "Grant, translation," at p. 11. The grant, as a matter of fact, is printed as Exhibit C, the opening paragraph being put at the end instead of the beginning, and the balance of the grant being repeated again as the first half of the paper, headed Exhibit C^{a}, Exhibit D. There are also some omissions, which, however, do not seem to be material. These papers would be better understood by examining (were it possible to do so) the record in the Sandoval case above refered to, where they are printed at pp. 80–87.

The petition, as above stated, is printed at p. 11, and dated San Miguel del Bado, March 20, 1835. It is headed with the unexplained words, "For the years one thousand eight hundred and twenty-six and eight hundred and twenty-seven." The four petitioners, for themselves and in the name of 25 men, state—

> That having *registered* a vacant and uncultivated piece of land, commonly known by the name of Las Vegas, on the Gallinas River, about five leagues distant from this settlement, which land we solicit *for the purpose of planting a moderate crop, to have also the necessary land for pasture and watering places and having the following boundaries:* On the north the Sapello River, on the south the boundary of the grant made to Don Antonio Ortiz, on the east the Aguage de la Zegua, and on the west the boundary of the grant to San Miguel del Bado, which grant we pray for without injury to any third party, binding ourselves *to receive possession in the name of the federation and to comply with the reasonable and equitable conditions* which your excellency, by virtue of the authority conferred upon you, may be pleased to establish for the grant of the land, being pleased to lay this our petition before the most excellent territorial deputation, having first obtained *the customary report*, which by law is entrusted to your excellency, in order that that most excellent body may order the aforesaid grant to be made to us, in which the advancement of agriculture and the well-being of several families without occupation are interested.

The "territorial deputation" above referred to is the legislative body of the Mexican Territory of New Mexico.

It also appears from this petition that there was a custom of obtaining a recommendation from the nearest *ayuntamiento* before applying to the legislative body for a grant of land.

On the same day the "corporation," by its president, Jose Ulibarri, the four justices, its attorney, and its secretary, forwarded the petition to the territorial deputation "in order that its excellency, if it sees proper, may provide them with the land prayed for, the *entailment* of which is earnestly aspired to" (p. 12).

A defective copy of the grant by the territorial deputation will be found in the last paragraph of p. 12 and the first paragraphs of p. 13. The deputation resolved as follows:

> The land contained within the boundaries expressed in this petition is granted *not only to the petitioners and the residents of El Bado, but also generally to all who may be destitute of lands to cultivate*, provided "that the grant to these lands is made *on condition that the pasture and watering places are free to all;* in view of all which the political chief will receive the petitions which may be made and shall cause them to be provided for agreeably to what has been ordered."

The deputation directed that "these original proceedings be forwarded to the political chief" for execution. It will be noticed that the prayer of the petition is in effect denied; that no grant, properly speaking, is made to the petitioners, but that general authority is given for the colonization of the land described.

This paper shows how misleading are the words "Grant, translation" at the top of p. 11.

The next paper in order is a copy of the instructions sent by F. Sarracino, the political chief (or acting governor) of the Territory, to Jose Ulibarri, the constitutional justice of El Bado. Here, as in the case of the grant itself, the paper is defective (being printed in full in the Sandoval record). The defects are not, however, material. The petition is transmitted to the justice with directions to return it with his report, and his instructions are as follows (p. 13):

> And I communicate it to you for the entire compliance therewith, taking into consideration that *the grants are to be made according to the means of each one of the petitioners*, in order that they may not leave any land which may be given to them without cultivation. It is also convenient to suggest that *you* should *select a site for a town*, to be built by the inhabitants, together with such other steps as you may deem proper for the security of the inhabitants, *who, on account of settling on the land indicated, will be included in your jurisdiction*. You will therefore adopt such measures as will be most conformable to the laws.

It will be noticed that the El Bado authorities are charged with the duty of dividing up the land and selecting a site for the town, and that the jurisdiction over the new colony remains with El Bado. This paper is contained in the last paragraphs of Exhibit C^{a}, Exhibit D, and the first of Exhibit E, and dated at Santa Fé, March 24, 1835. The paper at the foot of p. 11 appears to be the entry of these instructions upon the official records.

The next paper in order is the report of Ulibarri, the constitutional justice, which is dated on April 6, 1835, at "Nuestra Señora de los Dolores de Las Vegas," the modest name of the new settlement. It is printed at pp. 13–16, ending with the signature on the sixth line of

p. 16. Ulibarri reports that he proceeded to Las Vegas "for the purpose of distributing the lands to 25 individuals mentioned in the petition dated March 28, 1835 and in general to those who are without lands, not only those within this jurisdiction, but also anyone who may present himself to me who has no occupation;" that he examined and measured the land; that he "made the distribution according to that portion of the colonization law which refers to grants of the public lands," and to the directions of the territorial deputation and political chief. He, however, says (p. 14):

> *Each individual* received *a gratuitous piece of land, according to his means, with the understanding that* of the lands given to the persons contained in the accompanying list *none should remain uncultivated.* The whole matter was concluded with the best measures which myself and the parties interested considered the most convenient *in order that each party should be satisfied with his share,* setting opposite to each one's name the number of varas he received. The aforementioned list also contains the number of individuals who resided in the new settlement, and, after having made the distribution, I proceeded to make known to them the petition found at the commencement of this document, assigning them the same boundaries as are set forth in the petition. I also informed them that *the water and pasture were free to all,* and that the joint labor should be done by themselves without any dispute, and that the wall surrounding the town marked out should be made by them all, which being done, that they notify the justice in order that he may mark out to each one equally the portion he is entitled to; also that each one be well provided with arms, the

> care of which is entrusted to the lieutenant of police of that ward, who shall inspect the arms every eight days, and should he observe any infraction, to inform this court, as the head of the ward thereof, so as to provide the necessary measures. They were also informed *that no one should sell his lands until he acquired the title prescribed by law to all colonists.*
>
> * * *

The number of individuals among whom the distribution was made was 31. They received amounts of land varying from 100 to 250 varas, together with a further distribution for gardens. A plaza was also marked out.

The paper ends with the following statement: "I have signed this 6th day of April, 1835, attaching to this list of distribution the names of such individuals as may apply for lands after this date."

Next follow certain long lists of names representing persons to whom further distributions were made after the date above mentioned. Here again the record is so badly arranged that it is difficult to understand without comparison with the Sandoval record. It does not appear whether all of the distributions mentioned were made at the same time or not. On p. 18 appears the date "Vegas, June 11, 1841." Whether this applies to the next following distribution or to those immediately preceding it is not apparent. There is no statement to the effect that either the town of El Bado or the town of Las Vegas received any compensation for these distributions. They would appear, on the other hand, to be in compliance with the terms of the original grant of 1835. Nor does it appear whether these distributions were made by the authorities of El Bado or those of Las Vegas.

This bewildering record contains another transposition of papers at p. 19. Toward the foot of the page there appears an order for the further distribution of lands to new settlers, dated, "Office of the Senior Justice of the District of the Centre," and signed "Trinidad Barcello." To this paper the date "Valleys of San Augustine, November 20, 1846," appears to belong. The paper appears to be directed to Juan de Dios Maese as one of the justices of the peace, who is authorized to place certain petitioners in possession of lands "on the conditions referred to yesterday."

The report of this distribution precedes the order. It is made by Maese, one of the original settlers, and is stated to be "at the request and by the official grant of land for cultivation made by the senior justice to the citizens contained in the present list." Eleven "individuals soliciting the same were located," as stated in the report; "the present document to be attached to the general grant made to Las Vegas, in order that it may so appear and for security in all time to come." It is dated November 25, 1846.

The next paper is so defective that its date is unknown. It is a report of a subsequent distribution made by Hilaria Gonzales. It purports to be directed "to the justice of the peace, Don Juan de Dios Maese:" but the colon at the end of this clause is clearly erroneous. It is not the address of the Gonzales document, but that of the Barcello instructions above referred to. Gonzales appears to have been a successor of Maese in authority at Las Vegas. The report shows the distribution of 50 varas each to 60 individuals. It is noticeable that the title of the individuals to whom these distributions were made was not a title in fee simple, but their rights in the land terminated when they ceased to utilize it. The report (omitting the names of the distributees) is as follows (pp. 19–20):

> Las Vegas, on the 17th day [torn], at the request of seven individuals who have registered a tract of public land, *although the aforesaid land was given over three years since to another individual, who has not placed his hand on it*, and seeing the neglect and little interest taken by the former possessor of the land, I, the citizen Hilaria Gonzales, accompanied by the petitioners, having examined the land and considered their petition just, both being laborers and industrious in matters of agriculture, I saw proper to place them in possession of the number of varas of land which each one can cultivate, with the further provision, besides those provided in the colonization laws, that within eighteen months they shall use every effort to prevent their land from lying idle, and thereby lose their title thereto and be given to others who will cultivate them.
>
> The following are the individuals to whom lands were distributed, which list shall be attached to the general grant: * * *
>
> "After the allotments were made to settlers the Mexican authorities made four other grants, more or less extensive, outside of the allotted land, but inside of the exterior boundaries of the Las Vegas grant" (p. 39).

The bill contains the following allegation with respect to the land granted in 1835 (p. 2):

> The tract of land contained within said boundaries is the same tract of which survey was afterwards

made in 1860 and approved by the surveyor-general of New Mexico, as will hereafter appear, and contains 496,446.96 acres of land.

The other allegations with respect to this grant, so far as they affect the present case, are not necessary to discuss, since they simply undertake to state the construction of the grant under the Mexican laws, of which laws and construction the court takes judicial notice. The bill alleges that stock raising was the principal industry, the cultivation of the soil being incidental, and that the unassigned and uncultivated portions of the grant were held for the common use and benefit of all the occupants (p. 3). It also makes the following allegations (p. 4):

> From the time of being placed in possession as aforesaid, *all the lands* contained within the grant have been continuously and openly used and occupied by the inhabitants of Las Vegas *and vicinity*, within the exterior boundaries of the grant, as and for their own. The small tracts particularly assigned to individuals have been occupied and cultivated by them, while the great body of the land has been occupied and used by the inhabitants in common. The business of stock raising has been carried on to a large extent, and the pasturage and water have been free to all and for the common benefit of all within the grant. * * *

Anyone familiar with New Mexican usages could add that these 775 square miles of land, so far as not actually cultivated and so far as useful for pasturage, were doubtless used by anybody who came along with animals who needed pasturing.

This is perhaps not a subject of judicial notice, and the court may feel obliged to shut its eyes to the truth and consider this very important case upon this most imperfect record.

Congressional grant.—The above proceedings contain all that we know of the facts prior to the treaty of Guadalupe Hidalgo. The next paper in the record contains certain extracts from instructions of the Commissioner of the Land Office to the Surveyor General of New Mexico, dated August 21, 1854; which instructions were approved by Secretary McClelland on August 25, 1854. The instructions were issued under the act of July 22, 1854, c. 103, entitled "An act to establish the offices of Surveyor General of New Mexico, Kansas, and Nebraska, to grant donations to actual settlers therein, and for other purposes" (10 Stat., 308). This statute contained the following provision (§ 8):

> That it shall be the duty of the Surveyor General, under such instructions as may be given by the Secretary of the Interior, to ascertain the origin, nature, character, and extent of all claims to lands under the laws, usages, and customs of Spain and Mexico, and for this purpose may issue notices, summons witnesses, administer oaths, and do and perform all other necessary acts in the premises. He shall make a full report on all such claims as originated before the cession of the territory to the United States by the treaty of Guadalupe Hidalgo, of 1848, denoting the various grades of title, with his decisión as to the validity or invalidity of each of the same under the laws, usages, and customs of the

> country before its cession to the United States, and shall also make a report in regard to all pueblos existing in the territory, showing the extent and locality of each, stating the number of inhabitants in the said pueblos, respectively, and the nature of their titles to the land. Such report to be made according to the form which may be prescribed by the Secretary of the Interior, which report shall be laid before Congress for such action thereon as may be deemed just and proper, with a view to confirm bona fide grants and give full effect to the treaty of 1848 between the United States and Mexico; and until the final action of Congress on such claims all lands covered thereby shall be reserved from sale or other disposal by the Government, and shall not be subject to the donations granted by the previous provisions of this act.

Surveyor General Pelham is directed to acquaint himself with the land system of Spain, to cite claimants under the treaty of Guadalupe Hidalgo, and to submit evidence of their titles (p. 21).

Thereafter Francisco Lopez and two others, "on behalf of themselves and a large number of citizens of the United States, residents of the town of Las Vegas and its vicinity," representing "that *they and the citizens they represent are the claimants and legal owners*" of the land, petitioned the Surveyor General "that their claim and title to said lands be examined as required by law, and that said grant be confirmed *to them*." It appeared from the petition that Tomas Cabeza de Baca, for himself and others, were claimants of the same land (pp. 22–3).

On December 18, 1858, the Surveyor General made his report upon this grant. He first reports that the land had been lawfully granted to the ancestor of Baca in 1820. He reported that the grant to Maese and others in 1835 "is not contested on the ground of any want of formality in the proceedings, but, as far as the documentary evidence shows, is made in strict conformity with the laws and usages of the country at the time." He regarded his duty as "simply to ascertain whether the claims presented to him were of such nature as to separate the land embraced within the boundaries set forth in them from the public domain." He came to the conclusion that the land "is lawfully separated from the public domain, and entirely beyond the disposal of the General Government," but that "as this office has no power to decide between conflicting parties, they are referred to the proper tribunals of the country for adjudication of their respective claims, and the case is hereby respectfully referred to Congress, through the proper channel, for its action in the premises" (pp. 23–6). He referred to the claim generally as "of Las Vegas," and to its owners as "the last grantees," and heads it "The heirs of Luis Maira Baca and the town of Las Vegas."

On February 3, 1860, "the transcripts of 19 private land claims in New Mexico" (including apparently the Lopez claim) were transmitted to the Speaker of the House of Representatives by Secretary Thompson; and among these transcripts was the report of the Surveyor General with the accompanying papers (pp. 6, 26–7).

The original papers do not strictly bear out the allegations of the bill of complaint with respect to proceedings in Congress (p. 6). It appears that a bill confirming the grants was passed by the House (p. 31), and was referred to the Committee on Private Land Claims in the Senate. The committee reported a substitute through Hon. Judah P. Benjamin. This report refers to the Baca and Las Vegas grants as conflicting, but does not call attention to the peculiar terms and conditions of the latter grant. It erroneously refers to the Lopez claim as made by the "town of Las Begas or Las Vegas." It does not state that the grant failed to carry a fee simple title, and seems to assume that the individual allotments covered the whole territory. It states that the claimants under the Baca grant had "expressed a willingness to waive their older title in favor of the settlers if allowed to enter an equivalent quantity of land elsewhere within the Territory," and recommends acceptance of this proposal (pp. 27–30).

The act passed in pursuance of this recommendation is the document upon which these petitioners base their claim upon the title to the grant. It is the act of June 21, 1860, c. 167, entitled, "An act to confirm certain private land claims in the Territory of New Mexico" (12 Stat., 71). The relevant sections are as follows:

> §3. That the private land claims in the Territory of New Mexico, as recommended for confirmation by said Surveyor General in his reports and abstract marked Exhibit A, as communicated to Congress by the Secretary of the Interior in his letter dated the third of February, 1860, and numbered from 20 to 38, both inclusive, be, and the same are hereby, confirmed, with the exception of the claim numbered 26, in the name of Juan B. Vigil, which claim, numbered 26, is not confirmed.

§ 4 That the foregoing confirmation shall only be construed as quit claims and relinquishments on the part of the United States, and shall not affect the adverse rights of any other person or persons whomsoever.

§ 6. That it shall be lawful for the heirs of Luis Maria Baca, who make claim to the said tract of land as is claimed by the town of Las Vegas, to select instead of the land claimed by them, an equal quantity of vacant land, not mineral, in the Territory of New Mexico, to be located by them in square bodies, not exceeding five in number. And it shall be the duty of the Surveyor General of New Mexico to make survey and location of the lands so selected by said heirs of Baca when thereunto required of them: *Provided, however*, That the right hereby granted to said heirs of Baca shall continue in force during three years from the passage of this act, and no longer.

Subsequent proceedings.—Immediately after the passage of the act of 1860, the then Commissioner of the General Land Office addressed a letter of instructions to Surveyor-General Wilbur (p. 6), which contains the following directions (p. 33):

> To give this law timely effect, you will give priority in surveying private land claims to this claim, particularly as it is in the vicinity—about four miles from the outside line of the public surveys. You will proceed to have the exteriors of the Las Vegas town claim properly run and connected with the line of the public surveys. The exact area of the Las Vegas town tract having been thus ascertained, the right will accrue to the Baca claimants to locate a quantity equal to the area of the town tract elsewhere in New Mexico as vacant land, not mineral, in square bodies, not exceeding five in number.

A survey and plat were accordingly made showing the grant to contain 496,446.96 acres of land, or about 775 square miles. This survey and plat were approved by the Surveyor General December 8, 1860, and were shortly thereafter filed in the General Land Office (pp. 6, 7). The bill further alleges that the accounts of the Surveyor General were adjusted and settled in March, 1861, the relevance of which is not apparent. A copy of the plat will be found opposite p. 26 of the record.

The Baca heirs have received patents for their 496,446.96 acres of land elsewhere (p. 7). The survey and plat, however, have never been formally approved by the General Land Office, nor has any definite step been taken thereon since they were filed in 1860 or 1861. The record shows no claim of fee-simple ownership in the grant for the next 26 years (pp. 38–9). It is admitted, for the purposes of this case, that the large population which has settled upon the grant since 1860 claims under the grant, and that "the right of the town of Las Vegas and its inhabitants" to the ownership and occupancy of the same was never questioned up to 1887 (p. 7).

On March 2, 1887, Hon. George W. Julian, then Surveyor General of New Mexico, reported to the Department that "the people upon the Las Vegas grant" were entitled only to about 6,000 acres of land. On November 5, 1887, a resurvey was directed, but never made. On February 1, 1890, Edward F. Hobert, Mr. Julian's successor, disapproved this report and recommended that a patent be issued for the whole grant *to the town of Las Vegas*. On March 1, 1891, one Milhiser protested against Mr. Julian's report, and asked that the patent be issued to the guarantees (grantees) named in the original grant. On March 19, 1890, the County Commissioners of the county applied for a patent *to the town of Las Vegas* (pp. 7–8). On December 5, 1891, Secretary Noble rendered the opinion above referred to, which opinion is incorporated in the bill and is to be found at pp. 34–44. It is also reported at 13 L. D., 646. The Secretary sustained Mr. Julian's position, and directed a resurvey accordingly, but the resurvey has never been made. Secretary Smith's opinion declining to reconsider the question is to be found at pp. 44–5. It is based upon the principle of *res adjudicata.* It closes with the words "patent will issue as indicated in the decision of December 5, 1891."

Subsequent proceedings up to the time of the filing of the bill are described as follows (p. 9):

> In pursuance of the order of the Secretary of the Interior and the Commissioner of the General Land Office one Russell B. Rice has been employed and instructed to go upon the lands contained in said grant and make a survey, and in making of such survey he is to be guided and directed by the decision of the late Secretary of the Interior as hereinbefore set forth. Said surveyor has gone upon the lands of the plaintiffs and entered upon his work, and is now engaged in executing the orders of the defendants, the Secretary of the Interior and the Commissioner of the General Land Office.

SPECIFICATION OF ERRORS.

No assignment of errors is required by law or by rule of court upon such an appeal, rule 35 applying only to appeals under the act of 1891. The only error relied upon is the entry of the decree in favor of the complainants. This appellee's grievance is against the whole decree, not any particular part of it, although the United States, if a party to the suit, might have objected particularly to some of the clauses in the decree under *Stanley* v. *Schwalby*, *supra*.

ARGUMENT.

There is some difficulty in ascertaining complainants' theory of their own title. The town (which is not a municipal corporation) and its inhabitants are joined together in the allegation that the land belongs "to the plaintiffs." The decree declares that "said town became *and is* the absolute owner thereof in fee." The long and argumentative demurrer, however, makes no point upon this. We shall therefore assume that, since the decree, the "town of Las Vegas" is the sole appellee interested, and that it had capacity to sue.

I.

Upon the resignation of Secretary Smith the decree should have been reversed for lack of proper parties; and that action should be taken now.

The relief granted by the decree is twofold:

(1) It is declared that the property belongs to the town of Las Vegas, and that the United States has no interest therein. No interest is claimed by Commissioner Lamoreux or ex-Secretary Smith. A decree quieting title as

against the United States can not be entered in a suit to which the United States is not a party. It was, indeed, an impossibility for the complainants to obtain such a decree against the Government. (*Stanley* v. *Schwalby*, 162 U. S., 255.) This part of the decree, therefore, as stated at the commencement of the brief, is a nullity.

(2) The balance of the decree consists of an injunction against completing the survey now in progress, or tendering back the lands or any part thereof to the public domain, or in any manner interfering with the lands or with the right and title of the plaintiffs. As to these acts Commissioner Lamoreux is under the direction of the Secretary of the Interior. (*Warner Valley Stock Co.* v. *Smith*, 165 U. S., 28, 33–4, and auth. cit.) He therefore can not be enjoined from doing them in a suit to which the Secretary of the Interior is not a party. As soon as Secretary Smith resigned his position, and thereby lost authority over the subject, the suit became one solely against a subordinate officer, and no effectual decree could be made upon the merits. It hence becomes necessary in some form or other to dispose of the action without passing upon the merits. (Id., at pp. 34–6.)

What form of judgment should be adopted for this purpose?

In the case above cited it was argued by the undersigned on behalf of this same Commissioner that the appeal of the complainants should be dismissed. That, however, would have left upon the files of the Supreme Court of the District of Columbia and of the Court of

Appeals unreversed decrees purporting to decide the merits of the controversy. While such decrees would have been practically innocuous, this court nevertheless considered it the more proper course (although not one suggested by counsel) to remand the case "with directions to dismiss the bill, with costs, for lack of parties." (Id., p. 36.) This case differs only in that the plaintiffs were successful below, so that Commissioner Lamoreux is appellant; but it is a much stronger case for action such as was taken by the court, because the decrees now standing upon the record against the Commissioner are not innocuous, but make it a contempt for him to do what the present Secretary of the Interior has the right to require him to do. Upon so important a question as this it can not be expected that the Secretary of the Interior will yield to the decision of an inferior court. The decrees heretofore entered in this suit, if unreversed, will simply have the effect of forcing this Commissioner to resign whenever the controversy shall be taken up for action by the present Secretary.

The decree of the Court of Appeals was entered after the resignation of Secretary Smith.

It is submitted that the same judgment should be entered by this court as was entered in the Warner Valley case; that the decrees of the court below should be reversed, and the cause remanded with directions to dismiss the bill with costs for want of proper parties.

Since, however, the appellee presses for a decision of the controversy upon the merits, we shall proceed to consider the other points involved.

II.

If the survey of 1860 is final and unimpeachable, complainants can not sue in equity at all.

This point and the following one are raised by the third and sixth clauses of the demurrer.

(1) *Their title, so far as they have any, is a legal one, and will support an action of ejectment or constitute a defence at law to such an action.*

This is recognized in one of the cases cited by the learned Circuit Court of Appeals (*Tameling* v. *United States Freehold Co.*, 93 U. S., 644), which was itself an action of ejectment, as were *Langdeau* v. *Hanes* (21 Wall., 521); *Whitney* v. *Morrow* (112 U. S., 693, 695); and other actions which have arisen upon somewhat similar controversies. The Tameling case arose under this same New Mexico land grant act of 1860, and recognized "as the settled doctrine of this court that such an act passes the title of the United States as effectually as if it contained in terms a grant *de novo*, and that a grant may be made by a law as well as by a patent pursuant to law" (p. 663). The grant, therefore, was *in præsenti;* and if the survey is unimpeachable, and the title one in fee simple, complainants have a remedy at law if they are dispossessed or sued.

Hence they can not sue in equity at all, unless they can bring themselves within one of the recognized heads of equity jurisdiction.

(2) *The bill can not be sustained as one to prevent multiplicity of actions.*

No such claim is made in the bill or referred to in the decree; nor could be, for any action brought against the complainants would be brought by the United States or some grantee thereof. The United States and its grantees are not bound by the result of this suit, to which they are neither parties nor privies.

(3) *The bill can not be sustained as one to prevent a cloud upon complainants' title.*

A mere survey can not be a cloud upon the title; and any patent or certificate purporting to convey title from the United States would be shown nugatory (assuming complainants' position to be correct) by mere comparison of dates with the statute of 1860 and survey of that year.

The rule of equity, as usually laid down, is that an instrument is a cloud on title only when extrinsic evidence is necessary to establish its invalidity; but that, if no extrinsic evidence is required, and the alleged cloud is either void upon its own face or shown to be void by evidence which its proprietor must necessarily produce to maintain his title thereunder, it is not enough of a cloud for the chancellor to take cognizance of, and the complainant will be left to his action at law. (*Hannewinkle* v. *Georgetown*, 15 Wall., 547, 548; *Phelps* v. *Harris*, 101 U. S., 370, 375; *Chapman* v. *Brewer*, 114 U. S., 158, 171, and cas. cit.; *Mackall* v. *Casilear*, 137 U. S., 556, 564; *Robb* v. *Vos*, 155 U. S., 13, 38; *Rich* v. *Braxton*, 158 U. S., 375, 405–7.)

In *Van Wyck* v. *Knevals*, 106 U. S., 360, 370, Mr. Justice Field said, citing his own very clear discussion of the subject in *Pixley* v. *Huggins*, 15 Cal., 128:

> The existence of the patent also creates a cloud upon the title of the land. Every instrument purporting by its terms to convey land *from the original source of title*, however invalid, creates a cloud upon the title, *if it require extrinsic evidence* to show its invalidity.

This proposition, however, seems properly to be subject to a slight modification. If complainants' own deed or other instrument conveying title constitutes evidence sufficient to show the invalidity of the instrument upon which defendant's claim is based, then the latter can not be a cloud upon the title. To constitute a cloud, defendant's instrument must purport to convey land from the original source of title; and, further, the title which it conveys must purport to come from that source by some conveyance prior to the title with which it conflicts. This rule is clearly stated by the New York court of appeals, speaking by Judge Rapallo, in *Bockes* v. *Lansing*, 74 N. Y., 437, 441:

> It is only where there is an instrument or proceeding which on its face purports to create or convey a title *paramount to that of the party seeking relief*, or an incumbrance thereon, that an action will lie to set aside such instrument or proceeding as a cloud upon the plaintiffs' title.

A deed between strangers is void on its face, but is not a cloud upon title. (*Welden* v. *Stickney*, 1 D. C. App. 343; see *Nickerson* v. *Loud*, 115 Mass., 94, 97.) This has recently been held in *Thompson* v. *Etowah Iron Co.*, 91 Ga., 538, upon a full review of the authorities by Lumpkin, J. But the United States, if it has transferred title to appellant, is now a stranger, and can not cloud the title by any patent to a third party. (See *Moore* v. *Cord*, 14 Wis., 213; *Reyes* v. *Middleton*, 36 Fla., 77.)

We are aware that the same objection could have been taken in the case of *Noble* v. *Union River Logging R. R. Co.*, 147 U. S., 165, upon which the learned court of appeals rely. Indeed, that case is a weaker one for the complainant than the case at bar, since the document held to be a cloud upon the title was an order revoking the Secretary's approval of complainant's profile; but the order could not have been put in evidence without showing the profile itself, which was the muniment of title upon which complainant relied. No such objection, however, was made by counsel in the Noble case. It is believed that the objection, if made, would have been suspected. As it was not made, the case can not be considered as an authority upon it. (See *Chase* v. *United States*, 155 U. S., 489, 494–5, which overruled 22 prior cases where the point involved had not been raised.

(4) *This suit is a mere attempt to evade the non-suability of the United States.*

The rule that the United States can not be sued without its consent is one of policy and not a mere technicality. It therefore can not be evaded. That which can not be done directly can not be done indirectly. *Quando aliquid prohibetur, prohibetur et omne per quod devenitur ad illud.* (2 Inst., 48; Broom's Legal Maxims, 489;

Endlich, Interpretation of Statutes, § 138 and auth. cit.; *Pollock* v. *Farmers' Loan and Trust Co.*, 157 U. S., 429, 588; *Bellairs* v. *Bellairs*, L. R., 18 Eq., 510, 516.)

III.

If the survey is not final and unimpeachable, this decree should be reversed as an unauthorized attempt to control executive discretion.

The most cursory inspection of this record will show that the action of the Secretary of the Interior is far from ministerial—that he must exercise discretion of the most delicate and difficult kind. He must construe a most ambiguous statutory grant, and ascertain the limits of what seems to be a title hitherto unheard of in Anglo-Saxon jurisprudence. Even were the title clear, he would have the accuracy of the survey to pass upon.

That no injunction can be granted against the exercise of executive functions in the construction of an ambiguous statute, even though the court may disagree with the conclusion to which the executive officer has come, is a principle laid down in the two familiar opinions of Mr. Justice Miller in *Gaines* v. *Thompson*, 7 Wall., 347, 352–4, and *Litchfield* v. *Register and Receiver*, 9 Wall., 575, 577–8. These opinions were set forth *in extenso* in the brief filed on behalf of this appellant in *Warner Valley Stock Co.* v. *Smith*, *supra;* and it was there shown (p. 23), by reference to other decisions of this court with relation to the Des Moines River grant, that Mr. Litchfield was right upon the merits of the controversy involved in the case last cited, and that the register and receiver were wrong. Hence that the executive officer is wrong in his ruling upon a doubtful point is no ground for injunctive relief against him. The law does not intend that he should become party to such controversies at his own costs. When he has acted, the parties in interest may litigate among themselves, by ejectment, by suit to declare a trust, or otherwise, if his decision be not in its nature final. Until the executive acts "the court is powerless." (*Slidell* v. *Grandjean*, 111 U. S., p. 439.)

These cases thus applied to injunction suits the same rule which had already been thoroughly settled by decisions of this court upon *mandamus* proceedings, namely, that judicial process will not issue against officers of the coordinate executive branch of the Government when the point at issue involves the construction of ambiguous statutes or documents.

This ruling was first established in the well-known case of *Decatur* v. *Paulding*, 14 Pet., 497, upon full discussion. Two justices dissented upon this point, but there has never been any dissent in the decisions which have followed it. The rule doubtless gives a narrower scope to the remedies of *mandamus* and injunction against executive officers than exists in most of the States, where these summary remedies are a favorite method for obtaining the settlement of difficult statutory problems. The narrowness of Federal jurisdiction in this matter is doubtless due to the very powerful contest which was made in *Kendall* v. *United States*, 5 Cranch C. C., 163; 12 Pet., 524, against the constitutional power of Federal courts to issue writs enforceable only by contempt proceedings against high officers of a coordinate branch of the Government. The protest of Postmaster General Kendall and official opinion of Attorney General Butler upon this point will be found at 5 Cranch C. C., pp. 192–9, 221–5. While the dissenting justices in the Kendall case united with their brethren in overruling the constitutional point (12 Pet., p. 626), nevertheless, doubtless prompted by considerations of comity and out of respect to the prevalent theory of the mutual independence of the three branches of the Government, the court restricted their jurisdiction to very narrow limits (pp. 611, 613, 614, 624).

The Decatur case came up two years later before the same nine justices; and it is noticeable that Chief Justice Taney, who filed an individual opinion in the first case, and spoke for a majority of the court in the second, had been the head of the Treasury Department as well as Attorney General, while Mr. Justice Thompson, who spoke for the majority of the court in the first case, had been Secretary of the Navy, and Mr. Justice McLean, who filed an opinion in the second case, had been Postmaster General and also Commissioner of the General Land Office. The Decatur case turned upon the question whether an act could be enforced as ministerial when the statute directing its performance was ambiguous and it involved the payment of money out of the public Treasury. Justices Story and McLean, while holding that Secretary Paulding had correctly interpreted the joint resolution under which Mrs. Decatur claimed a right in the navy pension fund, nevertheless said that the question of interpretation properly came up in a *mandamus* proceeding, the latter justice saying (p. 517):

> I differ from a majority of the judges, who hold that the construction of this resolution, giving to the relatrix a pension, is a duty in the discharge of which an executive discretion may be exercised. The law is directory and imperative, and admits of no discretion on the part of the Secretary.

Mr. Justice Baldwin was of the same opinion upon this point, and stated it very clearly (p. 606):

> If the right of the relator was in all other respects clear, except so far as they depended on the construction of the acts of Congress, the case was of judicial cognizance only. The duty of a Secretary is not judicial; it is not his province to construe laws.

Mr. Justice Catron put his concurrence mainly on the ground that the writ sought would force money out of the public Treasury, saying that the act directed in the Kendall case "was no more an official act than the making of an entry by a clerk by order of a court of justice," and adding: "Had it not been placed on this narrow ground the decision could not have been made" (p. 521).

Chief Justice Taney's opinion was concurred in by five members of the court. He expressly refused to consider the true construction of the joint resolution, saying (p. 517):

> As we have no jurisdiction over the acts of the Secretary in this respect, we forbear to express any opinion upon the construction of the resolution in question.

As one of the grounds for holding that the Secretary in considering Mrs. Decatur's pension was not acting ministerially, he named the fact that it involved the construction of ambiguous provisions, saying (p. 515):

> He must have exercised his judgment upon the construction of the law and the resolution, and have made up his mind whether she was entitled under one only or under both, and, if he determined that she was entitled under the resolution as well as the law, he must then have again exercised his judgment in deciding whether the half pay allowed her was to be calculated by the pay proper or the pay and emoluments of an officer of the Commodore's rank.

He also laid down the rule that presumptively the duties of Cabinet officers are executive and not merely ministerial (p. 515):

> The duty required by the resolution was to be performed by him as the head of one of the Executive Departments of the Government in the ordinary discharge of his official duties. In general, such duties, whether imposed by act of Congress or by resolution, are not mere ministerial duties. The head of an Executive Department of the Government, in the administration of the various and important concerns of his office, is continually required to exercise judgment and discretion. He must exercise his judgment in expounding the law and resolutions of Congress under which he is from time to time required to act. * * * If a suit should come before this court which involved the construction of any of these laws, the court certainly would not be bound to adopt the construction given by the head of a Department, and if they supposed his decision to be wrong, they would of course so

> pronounce their judgment. But their judgment upon the construction of a law must be given in a case in which they have jurisdiction, and in which it is their duty to interpret the act of Congress in order to ascertain the rights of the parties in the cause before them.

It has been long settled in *mandamus* proceedings against executive officers that an act involving the construction of an ambiguous law is not ministerial but executive in nature, and therefore will not be controlled by the courts. (*Brashear* v. *Mason*, 6 How., 92, 102; *Reeside* v. *Walker*, 11 How., 272, 289; *United States* v. *Guthrie*, 17 How., 284, 304; *Carrick* v. *Lamar*, 116 U. S., 423, 426; *United States ex rel. Dunlap* v. *Black*, 128 U. S., 40; *United States* v. *Lynch*, 137 U. S., 280, 286; *Seymour* v. *South Carolina*, 2 D. C. App., 240.) Thus it has been said that an act, although otherwise purely ministerial, will not be directed in a case of doubtful right (*Redfield* v. *Windom*, 137 U. S., 636, 644), and that the duty must be "clear and indisputable." (*International Contracting Co.* v. *Lamont*, 155 U. S., 303, 308.) That the same principles apply to the correlative remedy of injunction we have already shown by the Gaines and Litchfield cases, *supra*.

In *Seymour* v. *South Carolina*, *supra*, the court of appeals of the District of Columbia reviewed all of the decisions of this court in *mandamus* cases, and pointed out that, since the Kendall case, only two writs have been approved: one in *United States* v. *Schurz*, 102 U. S., 378, where title to land having already indisputably passed out of the United States by execution of letters patent, the Secretary of the Interior was directed to perform the purely ministerial act of delivering the document; and, second, in *Butterworth* v. *Hoe, supra*, where the Commissioner of Patents prepared his return for the purpose of excluding all discretionary elements from the case, and making it turn upon the question whether his decision was reviewable by the Secretary of the Interior (112 U. S., at p. 53).

Many injunctions and writs of *mandamus* have been granted against State officials, such as *Board of Liquidation* (*McComb*, 92 U. S., 531) discussed in the Noble case, *infra*; but they are not in point, since the rule of *Decatur* v. *Paulding* is based on respect for a coordinate branch of the Government, while all branches are supreme over State officials within the Federal sphere of action. Writs of *mandamus* against court officers rest upon a principle of their own, being merely incidental to the proper conduct of judicial business, and ancillary to other litigation.

Up to the year 1893 we are unable to find the affirmance of a single injunction against a Federal officer upon the records of this court, except, under special statutory provisions to that end (now Rev. St., § 3636), in *United States* v. *Nourse*, 9 Pet., 7. Other applications had failed for various reasons. (*Litchfield's Case, supra*; *Snyder* v. *Marks*, 109 U. S., 189.)

In 1893 came the case of *Noble* v. *Union River Logging R. R. Co.*, 147 U. S., 165, upon which complainant relies. As it was without precedent, it is somewhat noteworthy that the Assistant Attorney General in charge of the appellant's interests made no contest as to the right to enjoin. Either because the Department desired a definite ruling from this court upon the meaning of the statute, or for whatever other reason, he simply argued the case upon the merits, precisely as it had presented itself to the Secretary.

The Noble case must be regarded as an extreme one, and perhaps not to be given as much weight as if the points of procedure had been raised by counsel.

Upon the present point, however, it supports the position taken by us. Nothing in the opinion indicates an intent to overrule the distinction between executive and ministerial acts. This distinction is set forth in the opinion, Mr. Justice Brown saying (p. 171)—

> That with respect to the former, there exists and can exist no power to control the executive discretion, however erroneous its exercise may seem to have been; but with respect to ministerial duties, an act or refusal to act is or may become the subject of review by the courts. * * * Indeed, the reports of this court abound with authorities to the same effect [citing cases]. In all these cases the distinction between judicial and ministerial acts is commented upon and enforced.

IV.

Assuming the merits of this controversy to be before the court, the suit must fail because the survey remains unconfirmed.

It has long been settled that, as a general rule, surveys under Spanish grants, like the ordinary surveys of public lands, must be confirmed by the Secretary of the Interior before they can be made the foundation of a claim of perfect title. The action of the Secretary is conclusive in the absence of fraud or mistake, and until he acts the grant is for practical purposes a float. The exceptions to this rule, such as that shown by *McCreery* v. *Haskell*, 119 U. S., 327, arise from the wording of special statutes, or from special circumstances such as that the land granted is an island, so that it needs no survey.

Castro v. *Hendricks*, 23 How., 438, arose under a California title which had been confirmed by the Board of Land Commissioners under the act of 1851, providing for our obligations to Mexican owners under the treaty of Guadalupe Hidalgo. The survey was approved by the Surveyor General, but disapproved by the defendant (Hon. Thomas A. Hendricks, Commissioner of the General Land Office) and by the Secretary of the Interior. The Supreme Court of the District of Columbia refused a *mandamus*. In affirming its decision Mr. Justice Campbell said:

> The Commissioner of the Land Office by virtue of enabling acts of Congress exercises a supervision and control over the acts of the subordinate officers charged with making surveys; and it is his duty to see that the location and survey made by that officer under the decree of the court, and which has not had the final sanction of the judicial tribunals, is in accordance with the decree. The refusal of the Commissioner of the Land Office to issue a patent upon this survey was an appropriate exercise of the functions of his office.

In *Snyder* v. *Sickles*, 98 U. S., 203, 211–12, Mr. Justice Clifford says:

> That the Secretary in the exercise of his supervisory powers may lawfully set aside a survey made under a confirmed Spanish grant, and may order another to be made, and issue a patent upon it.

This case was followed, after a very careful examination of the whole subject, in the often quoted case of *Knight* v. *United States Land Association*, 142 U. S., 161. In that case the survey relied upon was made in 1868 and confirmed by the Commissioner of the General Land Office in 1878. No appeal was taken from this confirmation, but the Secretary of the Interior subsequently sent for the papers in the case and reversed the Commissioner's action. A new survey was made in 1883 and held by this court to be lawful. The case arose under a Mexican land grant in the State of California.

In *Cragin* v. *Powell*, 128 U. S 691, 697–8, the surpervisory powers of the Secretary and Commissioner are plainly stated.

In the *Maxwell Land Grant Case*, 121 U. S. 325, 377, which was based upon this statute of 1860, Mr. Justice Miller said:

> We are very clear that it is not the province of this court to set aside and declare null and void these surveys and patents approved by the officers of the Government, *whose duty it was to consider them*, and who evidently did consider them with great attention, upon the mere possibility or a bare probability that some other survey would more accurately represent the terms of the grant.

In *Stoneroad* v. *Stoneroad*, 158 U. S., 240, the survey had been approved by the Secretary of the Interior (p. 245).

In *Russell* v. *Maxwell Land Grant Co.*, 158 U. S., 253, Mr. Justice Brewer said (pp. 256, 258, 259):

> A survey made by the proper officers of the United States, *and confirmed by the Land Department*, is not open to challenge by any collateral attack in the courts. * * * There must be some tribunal to which final jurisdiction is given in respect to the matter of surveys, and no other tribunal is so competent to deal with the matter as the Land Department. * * * Whether a survey as originally made is correct or not is one thing, and that, as we have seen, is a matter committed exclusively to the Land Department.

In *New Orleans* v. *Paine*, 147 U. S., 261, an attempt was made "to enjoin the action of an officer of the Land Department in relocating the boundaries of a land grant * * * upon the theory that a former survey of the same line had been examined, approved and paid for, and that the rights of the plaintiff to the lands included in such survey had thereby become vested." No formal approval had been given to the survey, and this court, by Mr. Justice Brown, said (p. 266):

> If the Department was not satisfied with the survey, there was no rule of law standing in the way of its ordering another.

Barden v. *Northern Pacific Railroad*, 154 U. S., 288, affords another example of the general rule that, although a grant may long since have been made *in præsenti*, and by the filing of a plat or otherwise, have ceased strictly speaking to be afloat, nevertheless its limits can not be regarded as finally fixed until final action by the Secretary of the Interior.

The survey of 1860 thus never became final by any act of the Secretary of the Interior, or even by any act of the Commissioner of the General Land Office. It still remains as it stood the day after it was filed, subject to their approval or disapproval.

It may be suggested that the Interior Department was guilty of *laches*. To this suggestion there are two answers.

First, even if its officers were guilty of *laches*, the United States would not thereby lose title to the property. *Laches* is merely a species of estoppel, and no title by estoppel against the Government can be based merely upon the inaction of its agents when no special circumstances at any time called for present action. It is not even estopped by their affirmative action when that is beyond "the strict limits of their legal authority." (*Wisconsin Central Railroad* v. *United States*, 164 U. S., 190, 210.)

Secondly, it is the complainants themselves who are guilty of *laches*, in not applying for a confirmation of the survey and thus bringing up the question for action in the Department. They do not claim that any application was made prior to that of Milhiser in 1890 (p. 8). The practice of the Land Department as stated in the demurrer (p. 47) is "not to take action on such surveys unless the same are specially called up." This is proper, both on account of the vast press of business there, and that such questions may be decided when the parties in interest are most likely to be heard.

Of this practice, verified by the signature of the Assistant Attorney General attached to the Interior Department as well as generally known, the court may properly take judicial notice. (*United States* v. *Bailey*, 9 Pet., 238, 255; *Heath* v. *Wallace*, 138 U. S., at pp. 573–4; *Fisher* v. *Hallock*, 50 Mich., 463, 465; *Merchants' Bank* v. *Hall*, 83 N. Y., 338, 345; *Isaacson* v. *New York Central R. R. Co.*, 94 N. Y., 278; *Slocovich* v. *Insurance Co.*, 108 N. Y., 56; see also *Phillips* v. *Detroit*, 111 U. S., 604, 606.)

V.

Assuming the Las Vegas grant to be valid, a new survey is necessary.

The town and its inhabitants join in praying for the recognition of a fee simple title in one or the other. This is vastly more than they ever had in Mexican times. If a fee simple title was granted on June 21, 1860, either to the town as an entity or its inhabitants collectively, then the only question for the Secretary of the Interior is the correctness of the survey; and this question is one purely of fact.

But if Congress did not grant to the town or to its inhabitants any more than they claimed to own in Mexican times, then a new survey is clearly required as a matter of law, since the Mexican title, if a fee simple anywhere, was not a fee simple except as to a very small percentage of the whole principality.

(1) *A Congressional grant is not to be extended by construction.*

This principle is too well settled to require discussion. (*United States* v. *Oregon & California R. R. Co.*, 164 U. S., 526, 539, and cas. cit.)

(2) *The Congressional grant is to be interpreted according to its plain intent, which was to perform our duty under the treaty of Guadalupe Hidalgo, by confirming existing titles.*

These positions also seem to require no comment. The latter principle has guided our legislators and courts under all similiar treaties (*McMicken* v. *United States*, 97 U. S., 204, 208–9) as well as under this treaty. The McMicken case construed an act passed on the day after the act here in question. This act purports only to contain "quitclaims and relinquishments."

(3) *The Mexican title was not a title in fee simple, except perhaps as to the 6,000 acres of land actually occupied at the time of the treaty of Guadalupe Hidalgo.*

A radical distinction will be observed between the case at bar and the other cases of a somewhat similar nature which have come before this court for adjudication. Thus in the Tameling case, relied upon by the learned Circuit Court of Appeals, petitioners had asked for an absolute grant of the land, which was accordingly made; and the justice delivered to them "the personal and perfect possession which they solicit serving as a title for them, their children and successors, in which I will protect and defend them." (93 U. S., at pp. 647–9.) In the famous *Maxwell Land Grant Case*, 121 U. S., 325, we quote from Mr. Justice Miller's statement of facts as follows (pp. 361–2):

> The authoritative grant of Governor Armijo, dated three days later, is in the following language:
>
> SANTA FÉ, *January 11, 1841.*
>
> In view of the request of the petitioners, and what they state therein being apparent, this government, in conformity with law, has seen proper to grant and donate to the individuals subscribed the land therein expressed, in order that they may make the proper use of it which the law allows.
>
> ARMIJO.

We have no quarrel with the numerous cases that have held a Congressional confirmation to be conclusive, although the Mexican grant was bogus.

The difficulty with the present claimants is that Congress has simply confirmed a preexisting title, and that the preexisting title is not the title which they now claim.

The grant was made "*not only* to the petitioner *and* to the residents of El Bado, *but also* generally to all who may be destitute of lands to cultivate" (p. 13). The grant, so far as it gave title to the petitioners or to any other inhabitants of the land, related only to so much thereof as was actually taken up and cultivated (p. 13) at the very inception of the new settlement. An invitation was given to "any one who may present himself to me who has no occupation" (p. 14). Possession of this qualification was to be judged of, not by the petitioners or any committee of their number, but by the constitutional justice of El Bado.

There was an "understanding" with each individual grantee "that of the lands given to the persons contained in the accompanying list none should remain uncultivated" (p. 14). That the "understanding," as the word is used by the translator of this record, was in truth a condition, is shown by the fact that land once granted to "an individual who has not placed his hand on it" was regranted to others (pp. 19–20).

Another condition imposed was "that no one should sell his lands until he acquired the title prescribed by law to all colonists." This reference was to the Mexican Colonization Law of 1828 or to prior Spanish and Mexican statutes. It is a little difficult to understand in what respect the title thus remained inchoate. The petitioners were in no respect contractors, so that § 7 of the law of 1828, requiring the approval of the supreme government of Mexico, is not applicable (Reynolds' Spanish and Mexican Land Laws, p. 142). If, as supposed by the court of appeals, the act of 1828 applied at all to these town grants, the reference must be to §§ 11 and 12 (id., p. 143):

> The Political Chief shall set a reasonable time for the settler, within which he must necessarily cultivate or occupy the land in the terms and with the number of families which he has stipulated, in the intelligence that if he does not do so, the grant of the land shall be void, but the Political Chief may, nevertheless, re-validate it in proportion to the part in which the party in interest has complied.
>
> Every new settler, after he has cultivated or occupied the land under his stipulation, shall be careful to so show to the municipal authority, in order to con-

solidate and secure his right to the property to enable him to freely dispose thereof, after the proper record has been made.

The grant was thus inchoate and imperfect in 1848, even as to the actual *bona fide* settlers and cultivators, since they had taken no steps to confirm it; but this defect may be regarded as cured by the act of 1860. As to the 6,000 acres which were under cultivation or otherwise occupied in 1848, we may consider that the Congressional grant constitutes a conveyance of title in some respects similar to an entailment: that the land is heritable but not alienable, and that it reverts to the Government when abandoned by the owner. The translator has therefore called the original grant of title an "entailment" (p. 12).

What, then, is the condition of the title as to the remaining 490,000 acres, and why was it necessary for Congress to separate this in 1860 from the public domain?

This vast property was in the nature of an ancient common. "The water and pasture were free to all;" so long, that is, as the land should not be taken up in individual allotments. This is a valuable right in an arid country like New Mexico; or rather, it becomes a valuable right as the country becomes settled up.

The fee of the unsettled lands, however, remained in the State (Hall's Mexican Law, p. 53); and this was recognized in Mexican times by the making of four separate grants overlapping this grant (p. 39).

The territory granted was not even an entity politically considered. It remained within the jurisdiction of El Bado (p. 13) until, probably by a rearrangement of jurisdiction due to increase of population, it became self-governing by some law or ordinance not appearing.

In fact, the so-called grant was a mere promise that all persons who should go upon the land, so long as the promise remained open, should receive the right to occupy it with an opportunity in the future of acquiring title to so much as they might actually occupy and improve for the benefit of the community. Their interest in the bulk of the territory granted amounted to nothing more than an easement; and an easement which was in the then unsettled state of the country of no practical value, since it was shared by all others who might come along that way.

Like the Royuela grant discussed by this court in *Interstate Land Co.* v. *Maxwell Land Grant Co.*, 139 U. S., 569, 580, *et seq.*, this "was simply a designation of a tract within which the petitioners might establish a colony;" with the difference that the Las Vegas grant is not made to an *empresario* or contractor, so that the original petitioners who obtained the grant had no more interest in it than any person who might in the future be "without occupation" and ask for a share in it.

A very careful and interesting discussion of this grant was made by Chief Justice Long of New Mexico in the case of *Milhiser* v. *Padilla*, an account of which was printed in pamphlet form at East Las Vegas in 1890, entitled "History of the Las Vegas Grant." A copy of this pamphlet is in the Interior Department. The Chief Justice's opinion is referred to by Secretary Noble. Some of his conclusions seem sound. He says (pp. 64–5):

> It is clear to my mind from the record that the government of Mexico, in making this grant, desired and intended to populate her public lands; that she

> intended to give in fee to each settler on the Las Vegas Grant all the land he could cultivate, which after actual cultivation for a period of years would become his to do with as he should choose; that tracts of land were by the constituted authorities to be from time to time distributed to other settlers as they might make application, and that each subsequent distributee held under the original grant and under his possession and allotment. It is not proven that the petitioners were men of large capital intending at their own expense to çolonize families and settle and maintain them on the grant. They were evidently poor persons and of but moderate means, seeking homes for themselves and families as a means of subsistence, and desiring the settlement of other persons near them, as a means of building up the town of Las Vegas for a protection against the hostile Indians. Each new settler constituted one more arm of strength for protection, an additional aid for the upbuilding of the settlement and new town, and naturally was welcomed for the aid he gave to the common cause. In my opinion the thought of exclusive ownership of the whole grant by the petitioners was never entertained during the jurisdiction of the Mexican government, but, to the contrary, the decree of the Provincial Deputation, the distribution under official authority of different tracts to separate individuals for ten years after the date of the grant, the acts and qualified possession of the settlers, all show the land unoccupied to be held for the benefit of all who might come, destitute of land, to make settlement.

Until allotted, each tract remained in the ownership of the State, subject to its unlimited power of disposal.

(4) *The Mexican title is not enlarged by any proceedings subsequent to the treaty of Guadalupe Hidalgo or by the act of 1860.*

The learned Circuit Court of Appeals, quoting from the opinion of this court in the entirely different Tameling case, seem to reach the conclusion that the Mexican title was turned into a fee simple by some language in the report of Surveyor General Pelham. We are unable to find anything in his report upon which this theory can be based. He simply says that the present grant "is not contested on the ground of any want of formality in the proceedings, but as far as the documentary evidence shows is made in strict conformity with the laws and usages of the country at the time" (p. 26), which is correct, but fails to call attention to the fact that the grant was still inchoate. This omission misled Congress into its (successful or unsuccessful) confirmation. He says that the land is by the grant "lawfully separated from the public domain and entirely beyond the disposal of the general government" (p. 26). This is correct only to the extent that the government cannot deprive the settlers of their easements or rights of common in the land as long as it remains uncultivated; but such language as this cannot operate upon a subsequent act of Congress so as to turn a confirmation of qualified ownership into a grant of a fee simple.

Senator Benjamin's report refers to the two conflicting claims to this same grant, namely, that of the Baca heirs and this Las Vegas claim. As to the Baca grant he says (p. 30): "This grant was in fee and is a genuine and valid title." He significantly omits to state that the Las Vegas grant is in fee, simply saying that "the petitioners were put in possession. The land has been divided out and several hundred families are located on it" (p. 30). Apparently his attention was not called to the enormous extent of the grant, but he supposed that it had been entirely divided up, so that there was some sort of ownership in some individual to each acre. The act makes no reference to this Benjamin report, nor is there any evidence that Congress paid special attention to it.

The act of 1860 simply provides "that the private land claims in the territory of New Mexico, as recommended for confirmation by said Surveyor General * * * be, and the same hereby are, confirmed. * * * That the foregoing confirmation shall only be construed as quitclaims or relinquishments on the part of the United States. * * * That it shall be lawful for the heirs of Luis Maria Baca who make claim to the said tract of land as is claimed by the town of Las Vegas, to select instead of the land claimed by them an equal quantity of vacant land not mineral in the Territory." * * *

We shall argue in our next point that the grant is too uncertain to have any operation at all.

If it has any operation, it must be confined to confirming the title of the actual occupants, together with their rights of pasture and water; assuming, as does Chief Justice Long (Pamphlet aforesaid, p. 70), that Congress "anticipated such additional legislation as would enable the town of Las Vegas to work out the decree of the Provincial Deputation, that 'the lands are granted generally to all who may be destitute of land to cultivate,' under laws of the United States or the Territory, as it had been under the laws of Mexico."

(5) *Whatever may have been the Congressional intent, a further survey is necessary.*

Had Congress intended that the local authorities should continue as in Mexican times to allot further lands to all poor persons without occupation, giving the necessary titles, it would be important that a proper survey be made.

But under the Mexican title the State was left free to make new grants within this territory, not consulting the local authorities, provided at least the grants were made to actual cultivators. While the territory may not have been in every sense public domain—while Congress may have succeeded to no right of granting large tracts for grazing purposes or purposes of mere personal enjoyment—nevertheless Congress has rights in the unsettled land, and the Government is therefore entitled to know its extent.

The original settlers had no individual rights beyond their own allotments, nor had the settlers who came on the land between 1835 and 1848. There cannot therefore be any "power to apportion or assign the lands within the grant among the settlers according to the terms of the grant," as suggested by the Court of Appeals (p. 59).

VI.

The grant is void for uncertainty.

Congressional grants are less liberally construed against the grantor than private grants. (*United States* v. *Oregon & California R. R. Co., supra.*) If, therefore, this grant is so uncertain that it would be void were it a private deed, it must be regarded as without legal effect. Obligations under the treaty of Guadalupe Hidalgo might continue as to the successors in interest of the old Mexican cultivators, but they would require further action by Congress.

Were this grant made to the town of Las Vegas for its own benefit, or to any individuals for themselves and the inhabitants of a designated town, so as to show that the town was to become the owner of the property as ownership is understood in Anglo-Saxon jurisprudence, the non-incorporation of the town would not cause the grant to fail. We quote from 2 Dillon on Municipal Corporations, 4th ed., § 560, the italics being those of the author:

> A grant by an individual of a lot of land to "the people of" a specified county, not incorporated, is void. So a *reservation* in a deed, in favor of the inhabitants of an unincorporated place, is invalid. But a grant by the state or by the *sovereign authority* having the right to create corporations, to one or more persons who are *named* as patentees, for themselves and the inhabitants of a designated town, is valid, because the grant itself, coming from this source, confers a capacity to take and hold the lands in a corporate character.

But this statute purports only to be a quitclaim or relinquishment, leaving the title as it was in 1848. No grantee is named. The claim (following the Surveyor General's headline) is incidentally referred to as "by the town of Las Vegas;" but an inspection of the claim itself shows that it is by—

> Francisco Lopez and Henry Connelly and Hilario Gonzales, on behalf of themselves and a large number of citizens of the United States, residents of the town of Las Vegas and its vicinity.

They claim, not for the town, but for themselves and the "large number of citizens"—"that said grant be confirmed to them" (pp. 22–3).

We have thus this singular situation: Congress quitclaims to certain unnamed citizens all the title of the United States to certain property which has theretofore been conveyed to them and "also generally to all who may be destitute of lands to cultivate" (p. 13). Land under cultivation in 1848 or 1860 is quitclaimed to the cultivators. The rest is quitclaimed to whoever may squat upon it *in futuro*—for there is no longer any *alcalde* or other Mexican officer to give juridicial possession, and thereby to judge as to who is entitled to squat.

Could there be greater uncertainty?

The case comes within the leading authority of *Thomas* v. *Marshfield*, 10 Pick., 364, 367–8. The grant in that case was made to a "neighborhood" and is discussed by Wilde, J., as follows:

> But two objections have been made, which we think have not been, and can not be satisfactorily answered.

> 1. The first objection is, that the grantees are not named nor designated with sufficient certainty.
>
> 2. The other objection is, that some of the intended grantees were not capable of taking, not being in existence at the time of the grant.
>
> With regard to the first objection, it is not essential to the validity of a grant, that the grantee or grantees should be named; but if not named, they must be ascertained by description, so as to be distinguished from all others; and any uncertainty in this respect will render the grant void. The grant in question was made to the inhabitants of a certain neighborhood, but the neighborhood is not defined with sufficient certainty and its exact limits have not been ascertained.
>
> But if this difficulty could be avoided, an insuperable one remains. It was the intention of the town, that the right of common should be held in succession. It was a grant not only to those who resided in the neighborhood at the time of the grant, but to those also who might reside there afterwards. And as this intention cannot prevail, the object of the grant is defeated.

Upon a somewhat similar grant Kent, J., said (*Jackson* v. *Sisson*, 2 Johns. Cas., 321, 323–4):

> This would be like a grant to the parishioners, or inhabitants of a dale, or to the commoners of such a waste, or to the churchwardens of a parish, which are held to be void grants. (*Shep. Touch.*, 235, 236.)

To the same effect are *Simmons* v. *Spratt*, 20 Fla., 495, 504; *Kelley* v. *Bourne*, 15 Oreg., 476, 481; *Morris* v. *State*, 84 Ala., 457; *German Land Association* v. *Scholler*, 10 Minn., 331, 338. The test is, whether the beneficiaries are ascertainable. (See 1 Jones on Real Property in Conveyancing, §§ 241–3.)

"A patent to a fictitious person is, in legal effect, no more than a declaration that the government thereby conveys the property to no one." (*Moffat* v. *United States*, 112 U. S., 24, 31.) So a patent to all persons without lands to cultivate, with no test for their identification, would be no more than a declaration that the property is conveyed to persons unknowable. The patent is not voidable but void; and a statutory grant under like circumstances is void also.

VII.

The act is also ineffective because it quitclaims to a land title not recognized by our laws.

It is impossible that a title for the benefit of "all who may be destitute of lands to cultivate" should be recognized. It is repugnant to our ideas. It is not practically enforceable by our judicial system. It was not even in Mexican law a title as we understand the term, but a permission to colonize, revocable at any moment by the grantor. Of course Congress may establish a new kind of land title in a Territory, but it must do so in an intelligible way.

Were words of affirmative grant to be found in the statute, it might be construed to enlarge the estate into a fee simple. But a mere quitclaim leaves it as it is—an anomaly unrecognized by our jurisprudence.

It is respectfully submitted that in no view of the case can the decrees be sustained.

EDWARD B. WHITNEY,
Assistant Attorney General.

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Office Supreme Court, U. S.
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CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1896.

No. 626.

HOKE SMITH, Secretary of the Department of the Interior, and SILAS W. LAMOREUX, Commissioner of the General Land Office of the United States,

Appellants,

v.

JEFFERSON RAYNOLDS, for himself and the other inhabitants of the town of Las Vegas, New Mexico, and of the Las Vegas grant, and the town of Las Vegas,

Appellees.

Appeal from the Court of Appeals of the District of Columbia.

Brief on Behalf of the Appellees.

By ALPHONSO HART,
Appellees' Solicitor.

LONG & FORT,
Of Counsel.

H. L. McQUEEN, PRINTER.

THE LAW ASSOCIATION —OF— PHILADELPHIA.

IN THE

Supreme Court of the United States.

HOKE SMITH, Secretary of the Department of the Interior, and SILAS W. LAMOREUX, Commissioner of the General Land Office of the United States, *Appellants*,

vs.

JEFFERSON RAYNOLDS, for himself and the other inhabitants of the town of Las Vegas in New Mexico, and of the Las Vegas grant, and the town of Las Vegas, *Appellees*.

No. 626.

BRIEF IN BEHALF OF THE APPELLEES.

Statement of Appellees' Claim.

The town of Las Vegas and its inhabitants, together with those people who reside outside of the town and within the territorial limits of what is known as the Las Vegas grant, filed a bill in equity to restrain the Secretary of the Interior and the Commissioner of the General Land Office from taking further action in making a survey of said grant, by which they propose to take from it the great body of the land contained within its boundaries and make it a part of the public domain. The cause was heard before Hon. E. F. Bingham, Chief Justice of the Supreme Court of the District of Columbia, and a decree rendered against the Secretary and Commissioner. From that decree and judgment the Secretary and Commissioner appealed to the Court of Appeals of the District of Columbia. The Court of Appeals affirmed the decree rendered below. They now appeal to the Supreme Court of the United States. This last appeal was taken on the 5th day of October, 1896, more than a month after Mr. Secretary Smith had retired from office and, as to him, at least, there is no valid or sufficient appeal.

The action sought to be restrained in this case, arises out of the following condition of facts: The town and people of Las Vegas claim they are entitled to 496,446.96 acres of land, coming to them under and by virtue of a grant made in the first instance under the laws and customs of Mexico in the year 1835, and confirmed by act of Congress in 1860. They believe themselves entitled to all the land within the boundaries of this grant.

In 1891 Hon. John W. Noble, then Secretary of the Interior, decided and held that the people of Las Vegas were not entitled to all the lands contained within this grant, but only to so much as had been specially set off and allotted to different individuals prior to the year 1848. He directed that a survey of the grant should be made and these particular tracts should be determined by metes and bounds; that a patent should be issued to the town of Las Vegas for these several amounts, and that all the rest and residue of the lands contained in the grant should be surveyed and set off as a part of the public domain. (Exhibit "M," p. 32, Record.) By this action only about 6,000 acres of land is saved to the people of Las Vegas, while 490,000 acres is to be taken from them and turned back to be hereafter a part of the public lands of the United States. This order was made by Mr. Secretary Noble, but was not carried out during his term of office. After the Honorable Hoke Smith entered upon his duties as head of the Department the subject was taken up and the order issued directing that the Las Vegas grant be surveyed in accordance with the decision and order of Mr. Secretary Noble made in 1891. An application was made to Mr. Secretary Smith and to the Commissioner of the Land Office by the town of Las Vegas for a patent to this entire tract, and a protest was filed against the enforcement of Secretary Noble's order. This application was overruled and the request refused mainly upon the ground that the Secretary was unwilling to overrule, change, or modify the decision of his predecessor in office, and that whether right or wrong, the order of Secretary Noble must stand so far as the Interior Department is concerned. (Exhibit " N.")

The ground taken by the Secretary as a reason for denying the application of Las Vegas is based upon the idea that the matter having been decided by his predecessor in office he is not called upon and has no right to investigate its merit unless there was fraud or newly-discovered evidence or error in calculation. None of these things existed in this case. This doctrine, however, has not always been adhered to by the Interior Department. A notable exception is the Maxwell grant, to which we shall refer hereafter, where Secretary Cox decided that the grant could only contain 22 square leagues of land, and refused a patent for the amount claimed. Secretary Delano, his successor, when applied to, refused to reverse Secretary Cox on the ground that the action of his predecessor was binding upon him. After all this had been done, the successor of Mr. Delano overruled both of his predecessors and directed the issuance of a patent for nearly 2,000,000 acres, and the Supreme Court of the United States affirmed the proceeding.

We submit that whether Mr. Secretary Smith was without authority to reverse his predecessor or not there is no obligation upon him to carry out an unexecuted order, especially if that order be in violation of law. It is also true that an illegal decision by the head of a Department is not binding upon the courts, and is at all times a proper subject of review.

After the application of Las Vegas was overruled, one of the counsel in this case, acting for the people of that town, addressed a letter to the Secretary of the Interior asking if he could be heard in their behalf. To this letter no answer was made and so far as any action in the Land Office or in the Interior Department is concerned the case is closed and decided against the people of Las Vegas. Under the direction of the Secretary of the Interior and the Commissioner of the Land Office a survey of the land grant in question is now going forward. If carried out according to the instructions, as it will no doubt be unless something intervenes to protect our people, this land grant will be dismembered, and the great body of the land amounting to 490,000 acres or thereabouts will be taken from them. This land is at present occupied by a population of nearly 20,000 people. Their rights and title to the property come to them under the grant. The action of the Secretary disturbs or overthrows all these titles and involves and brings upon that people wide-spread disaster, and they are left without remedy to prevent the calamity unless protected by the courts.

To shield them against the ruin which would result from the enforcement of the order, this bill in equity was filed in the hope that the question involved may be impartially and judicially examined and determined.

The bill sets forth among other things that on the 20th day of March, 1835, a grant of land in New Mexico, with certain well-defined and distinct boundaries, was made by the government and public authorities of Mexico to Juan Dios Maese and others; that they were placed in possession and the boundaries pointed out; that they built the town of Las Vegas and made valuable improvements and established for themselves homes; that all the proceedings relating to the creation of the grant and their possession under it, were in accordance with the laws, usages and customs of that government and country, and they became the absolute owners of the property by an undoubted and indefeasible title; that in 1860 this grant was confirmed by Congress to the town of Las Vegas and its people; that immediately after the passage of the act of confirmation the Commissioner of the General Land Office caused a survey of the grant to be made and its exact area ascertained; that said survey is correct, and that by it the grant is found to contain 496,446.96 acres of land; that the plaintiffs and those under whom they claim, all of whom derive their title from and under the grant have been in the peaceable and undisturbed possession of all the lands contained in the grant ever since 1835, and in the exclusive possession of the same ever since 1860; that these lands were never any part of the public lands of the United States, and that plaintiffs are the absolute and unconditional owners thereof and entitled to the peaceable use and enjoyment of the same. Yet notwithstanding this fact, the defendants, the Secretary of the Interior and the Commissioner of the General Land Office, are causing a survey to be made, by and through which they propose to leave to the plaintiffs only about 6,000 acres, and take from them more than 490,000 acres, thus destroying their titles, driving them from the possession of their lands and bringing upon them irreparable and wide-spread ruin and disaster.

A more detailed and particular presentation of the facts set forth in the bill and exhibits will appear hereafter in the further statement of the case.

To this bill defendants have filed a demurrer, which, although peculiar in form, is in effect a general demurrer, admitting all the facts contained in the bill, and submitting to the court whether all these statements being true, the plaintiffs are entitled to relief.

The Grant Is Valid.

The first question, therefore, which demands a hearing is as to the validity of the Las Vegas grant. We claim that the grant is valid to the entire extent of its boundaries; in other words, that this 496,446.96 acres, a plat and survey of which is annexed to the bill in equity as an exhibit, is the property of the town of Las Vegas and the inhabitants of the grant; that they have an absolute title to it; that it never was any part of the public domain of the United States; that neither the Secretary of the Interior nor the Commissioner of the Land Office have any control over it, or any right to treat it in any manner as a part of the public lands. And we further claim that the action of Mr. Secretary Noble in ordering the survey to be made and the land turned back to the public domain was illegal and unauthorized, and that the action of the present Secretary of the Interior in carrying or attempting to carry out the order of Mr. Secretary Noble is also illegal and unauthorized, and an invasion of the rights of the people of Las Vegas. The proposed action of the Secretary and Commissioner is not taken with a view to correct any errors in a former survey of the grant. On the contrary, the correctness of the survey made in 1860 and which was approved by the Surveyor-General of New Mexico is admitted. The real purpose of the action taken by these officers as heretofore stated is to take from the land contained in the grant about 490,000 acres and make it part of the public lands of the United States subject to entry the same as other public lands. The effect of this action is to destroy the grant.

History of the Grant.

There was within the territorial limits of the Republic of Mexico a large amount of unoccupied land. Much of this land was lying at a great distance from the capital of the country, and it was often times separated by mountain barriers. The lands were also occupied in many instances by tribes of Indians who were a constant menace to the safety of the Mexican people. The principal business of the people was stock-raising. Large droves of cattle were kept upon these ranges of land. The cultivation of the soil was a matter of minor importance. Wood, water, and pasture were required in large amounts to carry on the operations and business of the people. It was the policy of the Mexican Government to encourage the establishment of colonies, and in order to do this, grants of large tracts of land were made from time to time to people who might apply for them, with the understanding that they were to go upon the lands and occupy them, establish communities for common defense and carry on their various occupations. Hundreds of grants of this kind were made.

Original Petition for the Grant and Proceedings Under It.

On the 20th day of March, 1835, Juan Dios Maese, Miguel Archuleta, Manuel Duran, and Jose Antonio Cassaos, for themselves, and in the name of twenty-five others, appeared before the corporation of El Bado, and filed their application praying that a certain tract of land might be granted to them. (Exhibit "A," Record, page 11.) Their application stated that having registered a vacant and unoccupied piece of land commonly known by the name of Las Vegas, on the Gallinas River, about five leagues distant from that settlement, which land was solicited for the purpose of planting a moderate crop, to have also the necessary land for pasture, watering places, and having the following boundaries: On the north the Sapello River, on the south the boundary of the grant made to Don Antonio Ortiz, on the east the Aguagae de la Zegua, and on the west the boundary of the grant to San Miguel Del Bado, they prayed that said corporation would be pleased to establish the grant to be made to them in which the advancement of agriculture and the well-being of several families without occupation were interested. It will be seen that the land prayed for had certain well-defined boundaries. This fact is important.

Thereupon, on the same day, it was ordered as follows:

> "This corporation is desirous of encouraging the advancement of agriculture and the location of so many families without occupation, and it being true that the land solicited as above is public land and without injury to any third party. * * * [Torn.] let this petition proceed to the most excellent territorial deputation, in order that its excellency, if it sees proper, may provide them with *the land prayed for*, the entailment of which is earnestly aspired to."

On the 23d day of March, 1835, at Santa Fé, and at the office of the most excellent deputation of New Mexico, it was resolved as follows:

"The land contained *within the boundaries expressed in this petition* is granted not only to the petitioners and the residents of El Bado, but is also generally to all who may be destitute of land to cultivate." Provided, that the grant of this land is made on condition that the pasture and watering places are free to all. And it was ordered "that the political chief receive the petition and cause the petitioners to be provided for agreeably to what has been ordered." It was also further provided that the party whose duty it was to put the petitioners and others who may be without land in possession, should select a site for the town to be built by the inhabitants, and should take such other steps as were proper for the security of the inhabitants." (Exhibits "B," "C," and "D," pages 12 and 13.)

On the 24th day of March, 1835, "the justice of El Bado was notified to proceed according to the directions of the most excellent deputation and this government.

Thereupon, Jose de Jesus Ulibarri y Duran, constitutional justice, proceeded to the land contained in the petition, and on the 6th day of April, 1835, *placed the petitioners and others in possession of the tract.* He made his report to the proper authorities, and in order that his actions may be fully understood I quote from that report. (Exhibit "E," pp. 14, 15.)

"I, the citizen Jose de Jesus Ulibarri y Duran, constitutional justice, the only one in this jurisdiction, proceeded to this town for the purpose of distributing the lands to twenty-five inhabitants mentioned in the petition dated March 20, 1835, in general to those who are without lands, not only those within this jurisdiction, but also any one who may present himself to me who has no occupation; and having examined the land I took the measure from north to south, after which I made the distribution according to the portion of the colonization law which refers to grants of the public lands; complying with the greatest care with the directions of the most excellent territorial deputation of New Mexico, contained in its decree of the 23rd of March, 1835, and the decree of his excellency, the political chief citizen, San Francisco Sarracino, dated the 24th of the same month; each individual received a gratuitous piece of land according to his means, with the understanding that of the lands given to the persons contained in the accompanying list none should remain uncultivated. The whole matter was concluded with the best measures which myself and the parties interested considered the most convenient in order that each party should be satisfied with his share to set opposite to each one's name the number of varas he received. The foregoing list also contains the number of individuals who resided in the new settlement, and after having made the distribution I proceeded to make known to them the petition found at the commencement of this document, *assigning to them the same boundaries as are set forth in the petition.* I also informed them that the *water and pasture were free to all, and that the joint labor should be done by themselves without any dispute, and that the walls surrounding the town marked out, should be made by them all,* which being done that they notify the justice in order that he may mark out for each one equally the portions he is entitled to. Also that each one be well provided with arms, the care of which is intrusted to the lieutenant of police of that ward, who shall inspect the arms every eight days, and should he observe any infraction to inform this court as the head of the ward thereof so as to provide necessary measures."

Here we have all the necessary steps taken to constitute a grant of land under the Mexican laws. The purpose was to establish a colony and community which should be able to protect itself. Special allotments of land in small quantities were made to individuals, while all the residue of the tract was to be held and used in common for the benefit of the entire community. They were to build a town for the protection and residence of the inhabitants. They were required to prepare themselves means of defense.

The boundaries of the grant were distinctly set forth. The petition which was filed on the 20th of March, asking for the grant, clearly points them out. With this petition before the tribunal to which it is addressed, it is ordered on the same day that it be sent the most excellent territorial deputation, in order that they may be provided with "the land prayed for."

On the 23d the deputation directs "that the land contained within the boundaries expressed in the petition be granted." All this being done, the party whose duty it is to place them in possession goes upon the land, examines it, takes the measure from north to south and, in express terms, makes known to the parties present the petition, "assigning them the same boundaries as are set forth in the petition."

There can be no doubt as to the identity of the land, neither can there be any doubt that it was the intention of the Mexican authorities to give to those people "the land prayed for." Small portions of it were to be cultivated by private individuals as gardens, etc., while the great body was the common property of the community to be used in carrying on their operations of stock-raising, and the pasture and the water were free to all. This plan of giving small parcels to individuals for cultivation and holding the great body of the tract for the common use of the community was the usual and ordinary method of making grants in Mexico. There was one condition contained in the order of the deputation, and that was that not only the petitioners but others who were without land should be permitted to have the benefit of the grant. This condition was fully complied with. When the parties were placed in possession a distribution of garden tracts was made among thirty-one different persons. Afterward an additional distribution was made among one hundred and eighteen others. Thus, it will be seen that the terms of the grant were carried out in letter and in spirit. No one has ever questioned the method of establishing the grant or the performance of its conditions.

Here, then, was a valid grant, not of a part but of a whole. All the land contained within the boundaries set forth in the petition was covered by it. Had the territory in question remained under the control of the Mexican government, these people would undoubtedly have remained in quiet and indisputable possession of the entire premises. The record shows that they did so remain until the cession of that territory was made to the United States in 1848. And even after that, their right of possession and ownership was not questioned, except by the Baca heirs, to whom I shall refer hereafter.

Treaty and Protocol of 1848.

By a treaty and protocol between the United States and Mexico made in 1848 it is expressly provided that nothing in the treaty should annul grants of land made by Mexico in the ceded territory, that all such grants shall preserve the legal value which they possess under Mexican laws, and that legitimate titles to every kind of real and personal property in the ceded territories are those which are legitimate titles under the Mexican laws in California and New Mexico, and the transition therefore of this territory from the jurisdiction of Mexico to that of the United States made no change whatever as to the rights of parties holding grants of land from the Mexican government. What was good under the old condition of affairs was good under the new, and the people living upon the grant continued, as they had done, in the peaceable and uninterrupted enjoyment of the land contained therein, notwithstanding the change of government.

Action of Surveyor-General of New Mexico under Law of 1854.

There were many private land grants in New Mexico, and Congress, on the 22d of July, 1854 (10 Statute, 309), passed a law making it the duty of the Surveyor-General, under instructions from the Secretary of the Interior, to ascertain the origin, nature and extent of private land grants in New Mexico, and that the Surveyor-General making the investigation should report those which in his judgment were valid, and those which were invalid. Under this law the Surveyor-General of New Mexico was directed to proceed at once and make a survey and investigation of these grants. (Exhibit "F," p. 20.) In order that he might be correct in all his findings and decisions he was authorized and directed to subpœna witnesses, to take testimony, and examine documents and the laws of Mexico and Spain relating to the subject of grants, and after having made full investigation his report was to be prepared. The Surveyor-General, acting under instructions, gave notice to parties who made claims to grants, directing them to appear before him and present their proofs.

Two parties appeared and made claim to the Las Vegas grant. One of these was Francisco Lopez and others, on behalf of themselves and a large number of the residents of the town of Las Vegas, and the other was the heirs at law of Luis Cabeza Baca. The first of these parties claim the land under the grant applied for on the 20th of March, 1835, to which we have heretofore referred, and which we denominate the Las Vegas grant. In their notice and petition to the Surveyor-General they describe the lands contained in the grant, the same as was done in the original petition in 1835, and set forth the same boundaries. (Exhibit "G," page 22.) The other made claim to the land under an alleged grant made to Baca in 1825. The Surveyor-General made full investigation of these respective claims. He took testimony, and after having closed his inquiry made a report to the Secretary of the Interior, on the 18th day of December, 1858, of his findings of fact and his conclusions of law. (Exhibit "H," page 23.) He first finds that the lands in question have been separated from, and are no part of the public domain. He further finds that each claimant without the other has a good and valid right. He declares that the grant to Baca seems to be a valid one, and that the one to Las Vegas, as far as the documentary evidence shows, is made in "strict conformity with the laws and usages of the country at the time." He concludes his report in the following terms:

> "It is firmly believed that the land embraced in either of the two grants is lawfully separated from the public domain, and entirely beyond the disposal of the general government, and that in the absence of the one, the other would be a good and valid grant. But as this office has no power to decide between conflicting parties, they are referred to the proper tribunals of the country for the adjudication of their respective claims. And the case is hereby respectfully referred to Congress through the proper channel for its action in the premises."

It is evident that in the opinion of the Surveyor-General there was a valid and legal grant made to each of these parties, and that it should be confirmed to one, or both.

He recommends that the grant be confirmed and that it shall be left to the courts to say, as between Las Vegas and the Baca heirs, which has the superior title.

He is emphatic in his report that this land is no part of the public domain; that it has been segregated, and that the general government has no authority over it, or right to interfere with it.

This report of the Surveyor-General, it will be remembered, was made in obedience to the express mandate of the statute, which made it his official duty to determine the validity and extent of the grant. It was transmitted by the Secretary of the Interior to Congress. As to what the grant covers there can be no doubt. If it covers anything at all, it covers all the land contained within the boundaries given in the original petition and the notice afterwards filed with the Surveyor-General, and which amounts to 496,446.96 acres; and if it is a grant for anything it is a grant for this amount. That the Secretary and the Commissioner of the General Land Office understood it in this way is evident from the character of their letters of transmission.

The Commissioner of the Land Office in his communication to the Secretary of the Interior says: "These claims have been *investigated and approved* by the Surveyor-General of New Mexico, with the exception of No. 26, which has been rejected by me." (Exhibit "J.") And the Secretary, in his communication to the Speaker of the House of Representatives, says:

> "I have the honor to transmit for the action of Congress, under the eighth section of the act approved July 22, 1854, the transcripts of 19 private land claims in New Mexico. * * *
>
> "Similar documents submitted by the Commissioner in the same letter for the Senate of the United States have been transmitted to the presiding officer of that body."

Report of Committee on Private Land Claims.

The next point in the history of this grant is that which is shown by the report of Mr. Benjamin from the Committee on Private Land Claims in the United States Senate. It appears that two lists of land claims with the reports of the Surveyor-General had been referred to this committee. In one list was claim No. 20, the one under consideration, known as the Las Vegas grant. The report of the committee recommends the confirmation of this claim. (Exhibit "K," Record, pp. 27–31.)

The first paragraph in the report refers to the first list and reads as follows:

> "That after examination of the various claims mentioned in the matter of said Surveyor-General to the Commissioner of the General Land Office, dated the 12th of January, 1858, they concurred in the recommendation of the said officers that the said claims should be confirmed with two exceptions, which they now proceed to notice."

The two exceptions were the claim of John Scolly and others, being No. 9, and the claim of Cornelio Vigil and Ceran St. Vrain, being No. 17. The committee proceeds further to say that the second report of the Surveyor-General (which includes the Las Vegas grant) "consists of an abstract marked Exhibit 'A,' and they *concur fully in the report of that office recommending the confirmation of all said claims except that which is number 26, in the name of Juan de Vigil.*" The committee further say:

"Among the claims embraced, however, in this second report and recommended for confirmation are two which cover the same tract of land embraced in one number, to wit: No. 20. To this tract the two claimants are, first, the heirs of Luis Maria Baca, who claims under grant made by the provincial deputation of Durango, to said Baca and his seventeen sons, on the 29th of May, 1821, which grant was ratified and confirmed in the—— day of February, 1825, by the Departmental Assembly of New Mexico. This grant was in fee, and is a genuine and valid title. Second, the town of Las Vegas. This town claims under grant made on the 23d of March, 1835, to Juan de Dios Maese, and 27 others, by the territorial deputation, a petition which represented the land to be public land, and the petitioners were put into possession. The land has been divided out and several hundred families are located on it.

"The Surveyor-General having none but ministerial duties to perform, has recommended the confirmation of both these titles, leaving the respective claimants the right of adjusting their conflicting claims in the courts. But Congress has other duties imposed on it, and it is bound to legislate in such a manner as to prevent, if possible, so disastrous a result as the plunging of an entire settlement of families into litigation at the imminent hazard of being turned out of their homes, or made to purchase a second time from a private owner lands for which they paid their Government a full equivalent in the labor, risk and exposure by which they have converted a wilderness surrounded by hostile savages into a civilized and thriving settlement, and this can be done at little loss or cost to the Government.

"The claimants under the title to Baca, also represented by Judge Watts as their counsel, have expressed a willingness to waive their older claims in favor of the settlers, if allowed to enter an equivalent of land elsewhere in the territory. The committee can not doubt that Congress will cheerfully accept the proposal, which indeed would undoubtedly have been acceded to by Mexico, if the territory had remained hers, and to whose rights and duties the United States have succeeded.

"The committee have therefore prepared an amendment to the House bill by way of substitute embracing the several provisions above referred to."

There can be no doubt as to the intention of the Committee on Private Land Claims. They found two parties claiming title to the same grant of land. The title of each without the other would be good, and in any event the land in the grant had been segregated and constituted no part of the public domain. The proposition of the Surveyor-General was that the grant be confirmed and that the two parties contending for it settle the controversy between them by appealing to the courts. The committee desired to avoid litigation, and the consequences which would result from it to the injury of the grant. And they therefore propose to settle the controversy between Las Vegas and the Baca heirs by giving to the latter an equal amount of land elsewhere, thus leaving Las Vegas in the complete and undisputed possession and ownership of the grant.

Act of Confirmation.

This recommendation of the committee was agreed to by Congress and culminated in the passage of the act of June 21, 1860. By that act the grant is confirmed absolutely to the town of Las Vegas. (Exhibit "L," p. 31.)

The confirmation is found in Section 3, which declares "That the private land claims in the territory of New Mexico as recommended for confirmation by said Surveyor-General in his reports and abstracts marked Exhibit "A," as communicated to Congress by the Secretary of the Interior in his letter dated the 3d of February, 1860, and numbered from twenty to thirty-eight, both inclusive, be and the same are hereby confirmed with the exception of the claim No. 26, in the name of Juan B. Vigil, which claim No. 26 is not confirmed."

And as if to place the matter beyond all possibility of doubt or cavil, the act proceeds in Section 6 to make provisions for the Baca heirs, and declares:

> "That it shall be lawful for the heirs of Luis Maria Baca who make claim to the said tract of land as is claimed by the town of Las Vegas, to select instead of the land claimed by them, an equal quantity of vacant land not mineral in the Territory of New Mexico, to be located by them in square bodies not exceeding five in number. And it shall be the duty of the Surveyor-General of New Mexico to make survey and location of the land so selected by said heirs of Baca, when thereupon required by them. Provided, however, that the right hereby granted to said heirs of Baca shall continue in force during three years from the passage of this act, and no longer."

It would be impossible to confirm a grant more clearly and explicitly than is done by the terms used in this statute. That Congress intended and did confirm claim No. 20, there can be no doubt, and that it intended to relieve the Las Vegas people from all claim made by the heirs of Baca, is equally clear. It removed every cloud of doubt from the title of Las Vegas to the land in question.

Survey of the Las Vegas Grant.

On the 26th day of July, 1860, about a month after the passage of the act of confirmation, the Commissioner of the General Land Office issued instructions to the Surveyor-General of New Mexico to cause all the land grants recently confirmed by Congress to be surveyed (Exhibit "La," p. 33), and he directed that the Las Vegas grant should be surveyed, first for the reason that by the 6th section of the act of Congress the Baca heirs were to have an equal amount elsewhere. These heirs could make no selection until the amount contained in the Las Vegas grant had been determined. These instructions of the Land Office were carried out. The grant was surveyed and its area accurately ascertained, and it was found to contain 496,446.96 acres. A plat was made showing its metes and bounds. The survey was approved by the Surveyor-General. The papers including the survey and plat (Exhibit "I," pp. 26, 27), together with the account of the costs of survey, were forwarded to the Land Office, where they were examined, and the accounts and costs of the survey adjusted and settled. The papers were filed among the records of the office and the cases are marked closed. This was the method of proceeding in the Land Office, at that time, and no other or further action was required.

Survey Approved and Patents Issued to Baca Heirs.

The Baca heirs, with the approval of the Land Office, made their selection of lands and chose 5 tracts containing 98,289.37 acres each. The Government approved the selection and patents have been issued to them for 496,446.96 acres (Record, p. 7). They have entered into possession and are now in the peaceable enjoyment of their lands. They have surrendered all claims to the Las Vegas grant and it remains confirmed by Congress to the town of Las Vegas and its people with no cloud or doubt upon its title. The plaintiffs and those under whom they claim have been in uninterrupted possession of these lands over 60 years, and their possession has been exclusive for 36 years.

ARGUMENT.

I.

The history of the grant as here given, all of which is admitted by the demurrer and also verified by documentary evidence, is itself an unanswerable argument in favor of its extent and validity.

Beginning with the petition of Juan Dios Maese and others filed in 1835, which was an application for a grant with definite boundaries, and tracing it from that day to the present there is no break in the claim and no conflict in the evidence. The corporation of El Bado which received the prayers of the petitioners and gave it favorable consideration, the most excellent deputation which approved it, the constitutional justice who placed the parties in possession of "the land prayed for," and the Surveyor-General of New Mexico who reported the case to the Interior Department with a favorable recommendation, the committee of the Senate who approved the report and recommended the confirmation of the grant, the act of Congress confirming the grant, the survey made by order of the Commissioner of the Land Office, the assignment of an equal amount of land elsewhere to the Baca heirs, its approval and the issuance of patents therefor, and finally the exclusive and peaceable possession and occupancy of the Las Vegas people for a long period of years, are all in perfect accord. Any attempt to divide or dismember the grant is in disregard of every step of the proceedings and at variance with the clearly expressed understanding and purpose of the Mexican authorities, the Surveyor-General of New Mexico, the committee of Congress and Congress itself.

The Supreme Court of the United States has held (Ryan *et al. v.* Carter, 93 U. S., 78) that an act of Congress unconditionally confirming a grant creates and vests a perfect title in the grantee. It is as good as a patent or a deed.

The act of Congress in this case is the supreme law by which we are to be governed. The Secretary and Commissioner are required to obey it the same as other people. By it the rights of the occupants upon one hand and the Government upon the other are to be determined. When Congress confirmed to the town of Las Vegas claim No. 20, being a tract of land bounded on the north by the Sapello River, on the south by the grant to San Antonio Ortiz, on the east by Aguagae de la Zegua, and on the west by the lands of San Miguel del Bado, it gave to Las Vegas an absolute and vested title to all the lands contained within these boundaries, whether it was one thousand or one million acres. The Secretary and Commissioner have no power to lessen or enlarge what Congress has done. They can neither make nor unmake a grant. They must obey the law as they find it. It is not for them to question the wisdom of Congress. In the matter of confirming this grant the legislative authority was supreme. Congress had the undoubted right to confirm the grant to the town and people of Las Vegas and give the Baca heirs 496,446.96

acres of land elsewhere. When title to land has vested in a party, the United States has no control over it. U. S. *v.* Schurz, U. S. 102, 378. It has done it here and the title is fully vested.

II.

Grant contains 496,446.96 acres.

Mr. Secretary Noble, to whose decision and report we shall hereafter refer, does not deny that a valid grant was made to the town of Las Vegas. He also admits that it contains 496,446.96 acres, but seems to insist that the title to only so much as had been actually cultivated by individuals prior to 1848 should be respected. We submit that if there was any grant at all to the people of Las Vegas it was for the entire amount, and not a small fraction of it.

The grant confirmed by Congress is claim No. 20, which includes all that is shown by the survey to be contained within its exterior boundaries. It was a confirmation not of a part, but of the whole. The grant is an entirety, and must either be rejected as wholly invalid, or accepted as valid to its entire extent.

There has been no time since 1835 when there could be a doubt as to the boundaries of the Las Vegas grant, and no time since 1860 when there could be a doubt as to the amount of land contained therein. The original description of the land was more definite and complete, and its boundaries were more clearly defined than those of the Maxwell, the Tierra Amarilla, or many other of the land grants confirmed by Congress, and which have been approved by the Interior Department and the Supreme Court. In the case of the two grants named, and many others that might be mentioned, the confirmation took place before any survey was ever made. The only guide was the boundaries by natural objects, contained in the petition for the grant. The surveys of the grants came after the act of confirmation. The boundaries of the Las Vegas grant have been carried through every stage of its history.

If the question had been asked of the corporation of El Bado as to what constitutes the grant and how much does it contain, they would have pointed to the boundaries set forth in the petition of Maese and others, and said "this is the land prayed for, and the granting of which we recommend." If the same question had been put to the most excellent deputation to whom the petition was referred, the answer would have been: "We grant the lands contained within the boundaries expressed in the petition." If the same question had been put to the constitutional justice who placed the parties in possession, he would have said: "I went with the parties upon the grounds, made known to them the petition, assigning to them the same boundaries as are set forth in the petition." If the question had been asked of the Surveyor-General of New Mexico, whose duty it was to ascertain the validity and extent of the grant, he would have answered, "It is claim No. 20, and the grant consists of the lands described in the notice of the claim. They are the same lands described in the original petition, and I recommend that the grant be confirmed." If the question were put to the Committee on Private Land Claims, it would have answered, "We recommend the confirmation of claim No. 20 to the town of Las Vegas, and as there are two claimants, we further recommend that one of these claimants, the Baca heirs, be permitted to select an equal amount elsewhere." If Congress were asked the question, the answer would be: "We confirm claim No. 20 just as it is presented, with all the boundaries therein set forth, and give to the Baca heirs an equal amount of land elsewhere." If the same question were asked of the Commissioner of the Land Office, he would have answered: "Congress has confirmed claim No. 20 to the town of Las Vegas. I have caused the grant to be carefully and accurately surveyed, and the amount of land definitely ascertained. The survey is correct. The Baca heirs have selected lands elsewhere, and I have issued patents to them for 496,446.96 acres, that being the amount of land in the Las Vegas grant, as shown by the survey."

Extent of Grant Fixed by Congress

Congress has itself fixed and determined the extent of the Las Vegas grant, as much so as if it had expressly declared how many acres it should contain. It has said in effect, this grant shall go to the town of Las Vegas. Make a survey of it; it belongs to them. And after your survey is made, and you know exactly how much land belongs to Las Vegas, then let the Baca heirs take an equal amount in some other part of New Mexico. All this is made clear by reference to section 6 of the confirming act.

The Surveyor-General in his report did not attempt to decide which of the claimants to the grant had the superior title. But there are certain facts about which he leaves no doubt. First, that the lands contained within the boundaries set forth in the notice is separated from the public lands of the United States and constitute no part of the public domain; and, second, that it is a valid grant to one or both claimants and should be confirmed.

With this report and the other documentary evidence before it, Congress confirms the grant and then provides in the 6th section of the act (Record, p. 32) "that it shall be lawful for the heirs of Luis Maria Baca, who make claim to the said tract of land as is claimed by the town of Las Vegas, to select, instead of the land claimed by them, an *equal quantity* of vacant land not mineral in the Territory of New Mexico, to be located by them in square bodies not exceeding five in number."

Now, how is the amount of land going to the Baca heirs to be ascertained? They are to have just as much as is contained in the Las Vegas grant; no more, no less. That grant is the measure by which the amount of the Baca lands is to be ascertained.

The statute having been passed, the next thing was to ascertain the exact amount of land contained within the grant. By direction of the Land Commissioner this was immediately done, and the area of the grant accurately ascertained.

As before stated, that survey was approved by the Surveyor-General. The papers and map of the survey, together with the account of the cost of the survey, were forwarded to the Commissioner of the General Land Office. The account was examined, approved, and paid. The papers were filed among the records of the office, and the case was marked closed. This was the method of approval adopted at that time in the Department, and this method was strictly followed. There was then no law requiring a formal approval of a survey by the Commissioner as such. The approval of the survey by the Surveyor-General, the settlement and adjustment of the expense account by the Department, and the filing of the papers and plat operated as an approval and confirmation of the proceedings.

But in this case, the Department went still further. As soon as the survey was completed and the proceedings approved in the manner we have stated, the Baca heirs selected 496,446.96 acres of land elsewhere and the Commissioner and Secretary have approved that selection, and patents have been issued to them for that amount.

This act by the Department in pursuance of the rule laid down by Congress in the confirmatory statute, as fully confirms the survey of the Las Vegas grant as it is possible to do. These heirs being entitled only to so much land as is included in the Las Vegas grant and the Government having caused the grant to be surveyed and having issued patents to the Baca heirs for the amount shown by such survey, is estopped from denying the amount of land contained within the survey.

It may be further added—that the correctness of this survey has never been denied; that the Las Vegas grant contains 496,446.96 acres is an admitted fact.

It will be borne in mind that the Secretary and Commissioner do not question the accuracy of what was done in 1860.

The object of the present proposed survey is not to correct any error, for none exists; but it is to cut the grant in pieces, to leave $\frac{1}{80}$ part to Las Vegas and take $\frac{79}{80}$ parts of it from them. It is a proposal to destroy the grant—to dismember it—to take 490,000 acres from it, while admitting that it is a part of it. It is to rob the plaintiffs of 490,000 acres, which Congress confirmed to them.

Thus in the case we are now considering there is really no question of error in survey, boundaries, or of quantity. The accuracy of the survey, the boundaries, and the quantity contained in the grant are admitted. It is simply a question whether the Las Vegas grant shall be destroyed or not—whether the Secretary and Commissioner shall be permitted to overrule and nullify an act of Congress and overturn rights which have been vested, recognized and acquiesced in by the public and the Government itself for more than half a century.

In view of these admitted facts, how absurd it is to contend that the Las Vegas grant contains only six thousand acres. If this is so then only that amount should have been given to the Baca heirs. But they have been given 496,446.96, because that is the amount of the Las Vegas grant as confirmed by Congress and determined by an accurate and approved survey.

III.

Not a matter of discretion.

It is contended by the learned counsel for defendants that the action of the Secretary and Commissioner comes within their discretionary powers, that it is merely a matter of discretion and judgment, and therefore not subject to review.

When was it ever held that the Secretary of the Interior had the right to repeal an act of Congress or to destroy it at his discretion? When was he authorized to violate the law? If he should order a survey of a farm in Ohio upon which the present occupants and their ancestors had lived for sixty years under a title given by Congress, and direct that the house, orchard and garden should be surveyed and all the rest and residue should be taken from them and made subject to entry under the land laws, could he defend his action upon the ground that he was simply exercising discretionary power? Such an act would be most arbitrary and utterly indefensible. Of course, in the case now on trial there is no intention upon the part of the defendants to do a wrong. But the effect and result of their action is precisely the same as in the case supposed. It is in effect the commission of a larceny of these lands. It disturbs the title of every person and absolutely destroys the title of more than nine-tenths of the people who live upon the grant.

It is useless to pursue this line of thought further.

When Mr. Secretary Noble admitted that the Las Vegas grant was a valid one, as he does in his decision—it necessarily follows that it is valid to its entire extent. He can not change the act of Congress and make a different grant from that which was confirmed. He can not cut off one-quarter of it and say this quarter is the grant and the other three-quarters are not. The law will not permit him to dismember it and thus in effect repeal an act of Congress. He is *bound* to obey the statute, and if he directly or indirectly seeks to set it aside and thus interfere with the legal rights of the inhabitants by robbing them of their lands, he becomes a violator of the law, and of the rights of the plaintiffs.

So when Secretary Smith attempts to execute and carry out the decision and order of his predecessor, he also violates the legal rights of the plaintiffs, and he can not plead the illegal and unwarranted decision of his predecessor as an excuse. It was a violation of law to direct that this grant be dismembered and these lands taken from the people. It is equally a violation of the law to dismember it and rob the people of their property.

IV.

These lands were never any part of the public domain.

They were severed from the public lands of Mexico in 1835 by the authorities of that country where the grant was made and the parties placed in possession.

Under the terms of the treaty with Mexico they remained private property as though no change of jurisdiction had taken place.

By the report of the Surveyor-General, acting under the law of 1854, they were declared to be no part of the public lands.

This fact is recognized and asserted by the act of Congress.

But even if they had not been severed from the public lands prior to 1860, the act of Congress being the highest authority upon this subject has made the severance and has placed them beyond the reach of the Secretary and Commissioner.

The inhabitants of the grant have been in its peaceable and uninterrupted possession and occupancy of the entire grant for sixty years—since it was made by the Government of Mexico—for forty-seven years since it came under the jurisdiction of the United States, and for thirty-five years since the confirmation by Congress.

V.

The action taken in 1860 was final. It is res adjudicata.

The contention of counsel for the Government that the survey made in 1860 was never approved, but was suspended, and that another survey can be made at the pleasure of the Land Office, is not warranted by the facts. There was never any suspension of the survey. The bill filed by the plaintiff sets forth that a survey was made by order of the Commissioner; that the survey was correct; that it was approved by the Surveyor-General; that the papers, maps and field notes, together with a report of the survey and a statement of the account and cost of making it were forwarded to the Land Office; that the accounts were settled and adjusted, the maps, report and papers filed among the records of the office and the case closed and that all this was done in accordance with the law, rules and regulations of the Department in such cases. Thus the case was ended.

But the further act of the Land Office in directing the selection and setting apart of an equal amount of land elsewhere to the Baca heirs and the issuing of patents therefor, which action was based entirely upon the survey of the Las Vegas grant, was a most formal and conclusive approval of what had been done. This action made it a finality and placed it beyond the reach of disturbance in the future.

Again, even if it were not so, the force of the point made by the learned counsel is destroyed by admitting, as they do, that the survey as then made was correct and that the area of the grant was accurately ascertained. If there are no errors to be corrected, where is the necessity or propriety of another survey? No number of surveys would ever change the facts as they now appear.

VI.

Secretary Noble's Decision.

Without attempting to review Secretary Noble's decision, and treating it with the highest consideration and respect, we wish to call attention to certain portions of it, by which it seems to us that he surrenders his whole case and overturns his own position. If his statement of facts is true, his conclusions drawn from them are erroneous.

He clearly and distinctly decides and holds that the Las Vegas grant is a valid grant for some amount of land.

Second. That it is a grant to the town of Las Vegas and that whatever amount belongs to the grant should be patented to the town, for the reason that such was the evident intention of Congress.

Third. That it was undoubtedly a valid grant to the Baca heirs in fee, for the entire amount of land within its boundaries.

Fourth. That Congress intended to give, and did give, these heirs as much land elsewhere as is contained in the Las Vegas grant, and thus the Baca claim is removed, leaving nothing to be considered save that of Las Vegas, and by this he necessarily admits that the Las Vegas grant and the lands patented to the Baca heirs are equal in amount.

Fifth. That the papers show that the entire tract embraced within the boundaries, as described in the grant papers, constitutes an area of "nearly 500,000 acres."

Sixth. That as to the grant making pasture and watering places free to all, the Department is not called upon to answer it, as the judicial tribunals are the proper ones to which those holding lands should appeal for protection against the invasion of their rights, if they have any.

The last proposition is most extraordinary in view of the action and decision of the Secretary. It is an admission that by the terms of the grant the pasture and water in the entire tract are free to all the property-holders living upon the grant, but he will not decide it, and he would compel them to appeal to the courts for a maintenance of their rights. This right to water and pasture is a valuable privilege—a property-right recognized in all countries, among all nations. And yet the Hon. Secretary proposes to take these water and pasture lands from them and drive them to the courts for protection. If they have rights to these lands, he should respect them. By taking these wood, water, and pasture lands away, he defies the inhabitants aud substantially admits that he expects they will make their appeal to the courts against his decision.

The Secretary admits that some of the inhabitants—those to whom allotments were made prior to 1848—are legal owners and occupants of the lands allotted them. These parties were clearly entitled to hold and use the pasture and woodlands and water in common. Even upon his own theory, by surveying this land and setting it off as a part of the public lands of the United States he deprives these people of their rights and deliberately takes the wood, water, and pasture from them. If this is not a violation of law and an unjust appropriation of that which belongs to others, it is difficult to conceive a case of the kind.

We submit that assuming the foregoing proposition of the Secretary to be true, he should have issued a patent for the entire amount of land claimed by the plaintiff.

Two points are sought to be made as the basis of the Secretary's decision, to wit:

First: That the grant was not a grant of land in fee.

Second: That it was made not only to Maese and the 25 petitioners, but to others who were without lands, and was conditioned.

As to the first point, our answer is, first, that the Las Vegas grant was of the same kind and character as the great majority of other grants which were confirmed by Congress, and which have been held valid by the Supreme Court. It was the usual method of creating grants. It was, in the language of the Surveyor General of New Mexico, " so far as documentary evidence shows, in strict conformity with the laws and usages of the country at the time." It was, and is intended to be a grant in fee. Second, even if it was not a grant in fee, but merely an easement giving to the people the right to use the wood, water and pasture in common, the Secretary has no authority to deprive them of it, or abridge the privilege in any manner.

Third: Congress has supreme authority. It was the sole judge of the title which had been granted. It decided in favor of and confirmed the grant to Las Vegas and its inhabitants. It could have done so whether the grant was in fee, or a mere easement, or no grant at all. In this case it unquestionably found a valid grant and confirmed it. Upon this subject we respectfully refer to the decision of the present Secretary of the Interior.

In the case of the Tierra Amarilla grant decided December 3, 1894, to which reference will be made hereafter, the Secretary says (19 L. D., page 400): "It is unimportant to inquire whether there is anything to be found in the record of the latter grant to restrict the quantity to the eleven-league limit of the Mexican law, or whether the pastures, woods, and watering places were left free and common to all with the *fee reserved to the Mexican government.* With full authority and power to do so, the grant was confirmed by Congress as recommended for confirmation by the Surveyor-General of New Mexico." And he holds that the Land Commissioner has no authority to make another survey.

We adopt the language of the able Secretary, and respectfully ask that it be applied to the case now under consideration.

As to the second point, that the grant was conditional, or a grant in futuro. A moment's reflection will show this position is not well taken. The only thing that can be claimed as a condition is that which provided that the grant was made not only to the petitioners, but to all who might be destitute of lands to cultivate and that the pasture and watering places should be free to all. This condition has been fully complied with. It was strictly observed by the constitutional justice who placed the parties in possession. All landless persons who applied were provided for. And the pasture and watering places have been free to all the occupants of the grant for 60 years.

Again, Congress was the sole judge of this condition or proviso, the same as in regard to all other matters and with full knowledge in the premises, it confirmed the grant.

There is not in the whole history of the public lands or of private land claims in the United States, a case where every condition has been more strictly complied with or where all the steps necessary to give an indisputable title have been taken than in the case under consideration.

VII.

What the Courts have decided.

We are supported in our contention by a long line of authorities, and to a few of these we wish to direct attention.

THE TAMELING CASE.

The case of Tameling *v.* the United States Freehold Company (93 U. S., 644) involved the validity of a grant of land in New Mexico. In that case the Surveyor-General of New Mexico had made an examination of the grant, and reported the case to Congress, recommending its confirmation, and it was confirmed.

The Supreme Court of the United States in that case holds "that the action of Congress confirming a private land claim in New Mexico, as recommended for confirmation by the Surveyor-General of that Territory, is not subject to judicial review." Mr. Justice Davis, in the course of his opinion, says:

> "We have repeatedly held that individual rights of property in the territory acquired by the United States from Mexico were not affected by the change of sovereignty and jurisdiction. They were entitled to protection whether the party had the full and absolute ownership of the land, or merely an equitable interest therein which required some further act of the Government to vest in him a perfect title. * * *
>
> "Congress acted upon the claim 'as recommended for confirmation by the Surveyor-General.' The confirma-

tion being absolute and unconditional without any limitation as to quantity, we must regard it as effectual and operative for the entire tract.

"The plaintiff in error insists that under the Mexican colonization laws in force when the grant was made, not more than eleven square leagues for each petitioner could be lawfully granted. As there were in the present instance but two petitioners and the land within the boundaries in question is largely in excess of that quantity the invalidity of the grant has been earnestly and elaborately pressed upon our attention. This was a matter for the consideration of Congress; and we deem ourselves concluded by the action of Congress. The phraseology of the confirmatory act is in our opinion explicit and unequivocal.

"In Ryan *et al.* *v.* Carter *et al.*, *supra*, 78, we recognized and enforced as the settled doctrine of this court that such an act passes the title of the United States as effectually as if it contained in terms a grant *de novo*, and that a grant may be made by a law as well as by a patent pursuant to law."

THE MAXWELL LAND GRANT.

The Maxwell land grant case (121 U. S., p. 325) is one of high authority upon this subject. That was an appeal from the Circuit Court of the United States for the District of Colorado. In that case the United States filed a bill in equity to set aside a patent dated May 19, 1879, granting to Charles Beaubien and Guadalupe Miranda 1,714,964.94 acres of land in New Mexico and Colorado. The Republic of Mexico, in 1841, made a grant of land to these parties and placed them in possession according to the form of Mexican law.

On the 15th of September, 1857, the Surveyor-General of New Mexico, pursuant to Section 8 of the act of Congress July 22, 1854, reported the grant to Congress for confirmation as a good and valid grant according to the laws and customs of the government of the Republic of Mexico, and the decision of the Supreme Court of the United States as well as the Treaty of Guadalupe Hidalgo. The grant was accordingly confirmed as recommended by the Surveyor-General in the act of June 21, 1860, being the same act which confirmed the Las Vegas grant.

Maxwell, in 1869, having become proprietor of this grant, applied to the Land Department for its survey, claiming that it included about 2,000,000 acres. Mr. Secretary Cox decided that the confirmed grant was limited to two tracts of eleven square leagues each. In 1871, the Maxwell Land Grant and Railway Company renewed the application for a survey and patent. This application was refused by Secretary Delano upon the ground that the decision of Secretary Cox was final, as to the extent of the grant, so far as the Executive Department was concerned. In 1877 the parties made another application for a patent. A survey was ordered and a patent issued upon the survey on the 19th of May, 1880. Upon these facts the Government filed a bill in equity to set aside the patent on five grounds.

First. That the grant of the Republic of Mexico could not, under Mexican laws, exceed altogether twenty-two square leagues, equivalent to 97,424.8 acres of land.

Second. That the report of the Surveyor-General recommended the grant for confirmation for no greater quantity of land than the twenty-two square leagues.

Third. That the confirmatory act of Congress did not operate as a grant *de novo* for the land in excess of twenty-two square leagues.

Fourth. The survey under which the patent was issued included many hundreds of thousands of acres besides the twenty-two square leagues.

Fifth. That there was mistake and fraud in the issuance of the patent.

The case was argued exhaustively and received most careful consideration from the court. And the court held that it did not satisfactorily appear that the grant made to Beaubien and Miranda was of the character, which by the decree of the Mexican Congress of 1824 was limited to eleven square leagues of land for each grantee.

Second. That it does appear that though the attention of Congress was turned to this question it confirmed the grant in the act of June 21, 1860, to the full extent of its boundaries.

Third. That in such a case the courts have no jurisdiction to limit grants, as the Constitution (Article 4, Section 1) vested the control of public lands in Congress.

It held, in short, that the Surveyor-General of New Mexico, who was authorized by law to report upon the extent and validity of land grants, had made his report to Congress, that Congress had considered the subject, had confirmed the grant, and that such action by Congress was final and could not be reviewed by the Supreme Court or any other court.

In the course of his opinion Mr. Justice Miller reviews the whole subject. He adopts the language used by the court in Tameling *v.* The United States Freehold Company, and then proceeds to say:

> "But whether as a matter of fact, this was a grant not limited in quantity by the Mexican decree of 1824, or whether it was a grant which in strict law would have been held by the Mexican government if it had continued in the ownership of the property to have been subject to that limitation, it is not necessary to decide at this time.
>
> "By the treaty of Guadalupe Hidalgo, under which the United States acquired the right of property in all the public lands of that portion of New Mexico which was ceded to this country, it became its right, it had the

authority, and it engaged itself by that treaty to confirm valid Mexican grants. If, therefore, the great surplus which it is claimed was conveyed by its patent to Beaubien and Miranda was property of the United States, and Congress acting in its sovereign capacity upon the question of the validity of the grant chose to treat it as valid for the boundaries given to it by the Mexican government, it is not for the judicial department of this government to controvert their power to do so. * * * The argument is here much pressed, that the power of the Surveyor-General of New Mexico in investigating and reporting upon these Mexican grants was limited to ascertaining the validity of the claim as a grant by the Mexican government and not to its extent, and that the act of Congress confirming the report of that officer and confirming the grant was not intended to be conclusive in regard to the boundaries or the quantity. But Section 8, act of July 22, 1854 (10 Statute, 308), under which the report of the Surveyor-General was made in regard to these claims, directs him to ascertain the extent as well as other elements, of the claim to be referred to him. * * * So that the Surveyor-General not only had the authority to determine the extent of the grant as well as its validity, but he had the means of ascertaining it. * * * And when the Congress of the United States after full investigation and elaborate reports by its committees, confirmed these grants 'as recommended for confirmation by the Surveyor-General of the Territory' we must suppose that it was intended to be a full and complete confirmation as regards the legal validity, fairness and honesty of the grant, as well as its extent. * * *

"We are therefore of opinion that the extent of this grant as confirmed by Congress is not limited to the twenty-two square leagues according to the argument of counsel, and that the act of Congress makes valid the title under the patent of the United States, unless proved to be otherwise by reason of error or mistake in the survey, or fraud in its procurement."

The learned judge in the closing portion of his opinion declares as follows:

> "The Constitution declares [Art. IV, Section 6] that the Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States. At the time that Congress passed upon the grant to Beaubien and Miranda, whatever interest there was in the land claimed which was not legally or equitably their property was the property of the United States, and Congress having the power to dispose of that property and having, as we understand it, confirmed this grant and thereby made such disposition of it is not easily to be perceived how the courts of the United States can set aside this action of Congress."

See also Astiazaran *v.* Santa Rita Land Company (148 U. S., 80).

We have quoted somewhat extensively from the opinion in the Maxwell case, for the reason that it is one of the grants confirmed by the act of 1860, and it applies with peculiar force and is absolutely conclusive as to the question now under consideration by this court. As before intimated the Supreme Court in the Maxwell case decided clearly:

First: That by law it was made the duty of the Surveyor-General of New Mexico to report his opinion as to the validity and also the extent of the land grants in New Mexico.

Second: That when Congress confirms this grant as recommended by the Surveyor-General for confirmation, it is a confirmed grant not only as to its validity, but as to its extent.

Third: That whether the amount of lands contained in the grant was authorized by Mexican law or not, and even if they are not, and are a part of the public lands of the United States, yet Congress having full authority and power over the subject has a right to convey and confirm the whole tract to the people named in the grant, and having done so its action is final and conclusive.

There is a striking similarity between the Maxwell and the Las Vegas grants not only in their origin but in all the proceedings since that time. The prayer of the original petition for the Maxwell grant was in words similar to those used in the petition for the Las Vegas grant. The description of the lands prayed for was by natural boundaries, in each case. The confirmation of both grants was recommended by the Surveyor-General. The grants were confirmed by the same act of Congress and the phraseology adopted was the same in each case. The survey of each grant was made after the act of confirmation and the amount of land ascertained by the same method. In each case complaint was made by Surveyor-General Julian, who made an attempt to invalidate or limit the grants. In the Maxwell grant the Interior Department and the Attorney-General sought to overthrow it. But the Circuit Court of Colorado and the Supreme Court sustained the grant to the full extent of its boundaries. It is confidently believed that the principles announced in the Tameling and Maxwell cases apply to and govern the case under consideration. The plaintiffs stand upon the record and act of confirmation. The Baca heirs have been taken care of. Their claim, which conflicted with that of the people of Las Vegas, has been satisfied, and the last vistage of the cloud upon the title of the Las Vegas grant has been removed.

PRESUMPTION OF TITLE BY ADVERSE POSSESSION.

There is still another feature of the case to which we wish to direct attention. The appellees, and those under whom they claim, have been in possession of the lands contained in the Las Vegas grant for more than sixty years, and that possession has been for the last thirty-six years adverse, exclusive and uninterrupted.

In the case of United States *v.* Chaves, 159 U. S., 452, the court holds: That the courts of the United States are bound to take judicial notice of the laws and regulations of Mexico, prior to the cession of Mexico under the treaty of Guadalupe Hidalgo and the treaty of December 30th, 1852, and that it is the general rule of American law that a grant will be presumed upon proof of adverse, exclusive and uninterrupted possession for twenty years, and such rule will be applied as a *presumptis juris et de jure* whenever by possibility a right may be acquired in any manner known to the law, including occupation of claimants under alleged Mexican grants prior to said treaties.

In that case, plaintiff claimed title under a grant alleged to have been made in 1833, and it was claimed that the papers showing the grant had been lost, destroyed or stolen. It was further claimed, and the proof tended to show that plaintiffs and their predecessors had been in possession of the lands for a long period of time.

Mr. Justice Shiras, in the course of his opinion, uses the following language:

> "The counsel for the Government contend that the court of private land claims and this court have no power to presume a grant upon proof of long-continued possession only; that their power is confined to confirming grants lawfully and regularly derived from Spain and Mexico.
>
> "It is scarcely necessary for us to consider such a question, because, as we have seen, there is ample evidence from which to find that these settlers were put into practical possession under a grant from the Governor of New Mexico, who, under the law then in force, had authority to make the grant. However, we do not wish to be understood as undervaluing the fact of possession so long and uninterruptedly as disclosed in this case.

Without going at length into the subject, it may be safely said that by the weight of authority, as well as the preponderance of opinion, it is the general rule of American law that a grant will be presumed upon proof of an adverse, exclusive and uninterrupted possession for thirty years, and that such rule will be applied as a *presumptio juris et de jure* wherever by possibility a right may be acquired in any manner known to the law. (1 Greenl. Ev., 12 Ed., sec. 17; Richard *v.* Williams, 7 Wheat., 59, 109; Coolidge *v.* Learned, 8 Peck, 503.)

"Nothing, it is true, can be claimed by presumption which owes its origin to, and can only be held by, matter of record; but lapse of time, accompanied by acts done or other circumstances, may warrant the jury in presuming a grant or title by record. Thus, also, though lapse of time does not of itself furnish a conclusive bar to the title of the sovereign agreeably to the maxim, *tempus occurret regi;* yet if the adverse claim could have a legal commencement juries are advised or instructed to presume such commencement after many years of uninterrupted possession or enjoyment. Accordingly, royal grants have been thus found by the jury after an indefinitely long-continued peaceful enjoyment, accompanied by the usual acts of ownership."

VIII.

Action of the Land Department.

There is another class of authorities bearing upon this subject equally emphatic and conclusive. This leads to a consideration of the history of this case in the Land Department of the Government.

The act of confirmation by Congress was in 1860. The Baca heirs had three years within which to select an equal quantity of land elsewhere. This selection was made and they have gone into occupancy of the same. From 1860 to 1887, a period of 27 years, the people of Las Vegas remained in the exclusive possession of this entire property, and no one ever questioned the validity of the grant to them, or their right to the full possession and enjoyment of it. On the contrary, in all the proceedings of the Department the validity of this grant was assumed and admitted. The government itself has thus aquiesced in the claim of the plaintiffs during all these years.

In 1887, George W. Julian, however, then Surveyor-General of New Mexico, wrote to the Department in substance, that in his opinion the people of Las Vegas were not entitled to all the lands contained within the boundaries of the Las Vegas grant; but only to so much as had been allotted and cultivated prior to 1848. He suggested that a survey be made of the lands, and the great bulk of them be set off as belonging to the public domain. The recommendation of Mr. Julian contained in this letter to the Department was not approved by the Commissioner of the General Land Office.

On the 4th day of April, 1888, Hon. S. M. Stockslager, Commissioner of the Land Office, addressed a communication to Hon. W. F. Vilas, Secretary of the Interior, in which he makes a careful review of the history of the Las Vegas grant, and takes strong grounds in favor of its validity to its full extent of 496,446.96 acres of land. He holds that the act of Congress confirming the grant is binding upon the Department, and that the Interior Department by its proceeding in relation to the land taken by the Baca heirs in lieu of the Las Vegas grant has fully recognized the validity of the last-named grant. The closing paragraph of Mr. Stockslager's letter to the Secretary, referring to the five tracts of land taken by the Baca heirs in lieu of their claim to the Las Vegas grant, says:

"The selections under this section (meaning the sixth section of the act of 1860), five in number, have already been made on the basis of the present survey of the Las

Vegas grant, and your predecessor in his decision of June 16, 1887, in relation to what is known as Baca Float No. 3, held as follows:

"'It was ascertained that the quantity of land claimed by the town of Las Vegas was 496,446.96 acres, thereupon each location embraced 98,289.39 acres.' This would seem to be a favorable recognition by your Department of the quantity embraced in the present survey."

Whether this opinion of the Commissioner of the Land Office prevented an attempt at surveying the land during the term of the then Secretary of the Interior or not, we are unable to say, but nothing was done.

Mr. Julian was succeeded in office by Edward F. Hobart as Surveyor-General of New Mexico. He examined the claim and reported, or, at least addressed a letter to the Land Office, in which he reviewed the position taken by his predecessor, and holds that Mr. Julian is in error, and that the grant as made to and contended for by the people of Las Vegas should stand. Notwithstanding this opinion of the Surveyor-General, Mr. Secretary Noble sustained Mr. Julian, and decided that the grant, while valid to a certain extent, was not valid to convey all the lands within the boundaries. He made the order for a re-survey, according to Mr. Julian's recommendation, as heretofore stated.

The validity and effect of the confirmation of the Las Vegas grant has been recognized and acted upon by the Interior Department ever since the decision of Secretary Noble, and as late as 1892.

The Director of the Geological Survey, in giving attention to the matter of sites for public reservoirs, sought to locate one, No. 26, on the territory contained in the Las Vegas grant. On the 19th day of April, 1892, the First Assistant Secretary of the Interior wrote to the Commissioner of the Land Office as follows:

"DEPARTMENT OF THE INTERIOR,
"Washington, *April* 19, 1892.
"(Puertocito Reservoir Site.)

"*To the Commissioner of the General Land Office:*

"SIR: According to your report, none of the lands designated by the Director of the Geological Survey, as needed for reservoir site No. 26 (Puertocito), New Mexico, is subject to such appropriation, because lying within the limits of the confirmed Las Vegas grant. The plat without my approval and accompanying papers are herewith returned, and you will cause the necessary notation to be made on your record.

"Very respectfully,
"GEO. CHANDLER,
"*First Assistant Secretary.*"

On the same day Secretary Chandler also rejected reservoir site No. 24, because the lands had been otherwise appropriated under the Mora and Las Vegas grants.

Thus it appears that these reservoir sites were rejected by the First Assistant Secretary of the Interior, for the reason that they were located in a grant or grants which had been *confirmed* by Congress, and were therefore no part of the public lands of the United States.

With the single exception of the action of Surveyor-General Julian and Secretary Noble, the Land and Interior Departments, ever since 1860, have uniformly and continuously held the Las Vegas grant to be good and valid to the entire extent of its boundaries.

Decisions of the Interior Department in other Cases.

Mr. Secretary Smith has expressed no opinion as to the validity of this grant or the extent of its boundaries, but was simply attempting to carry out the direction and order of his predecessor in office. From what we shall presently show, it is very apparent that if the matter was brought to his attention as an original one, uninfluenced by the judgment of his predecessor, he would sustain the Las Vegas grant to the full extent.

He has already, during his term of office, made two decisions upon precisely the same question, both of which are squarely in favor of our position in this case.

MESITA DE JUAN LOPEZ CASE.

The first is the case of the Mesita de Juan Lopez grant reported in 16 L. D., 445. In this case the Secretary of the Interior holds that "The confirmation of a Mexican grant as examined, approved and recommended for confirmation by the Surveyor-General and as duly surveyed by the United States, without requiring the issuance of a patent to a confirmee, leaves the Department without jurisdiction in the premises; and an order in the General Land Office for a re-survey of a grant thus confirmed is unauthorized by law."

A grant was made by the Spanish Government of New Mexico in January, 1782, to Domingo Romero Miguel and Manuel Ortiz, and the grantees were placed in possession. In September, 1872, application was made to the Surveyor-General of New Mexico to investigate and report upon said claim in accordance with the provisions of the act of 1854. The Surveyor-General made examination and a report recommending the confirmation of the grant. In 1876 the claim was surveyed and found to contain 42,022.25 acres. The report of the Surveyor-General and all the papers containing the survey, were sent to Congress, and on the 28th of January, 1879, the grant was confirmed. The following is the language of the confirmatory act:

"That private land claim known as the Mesita de Juan Lopez grant, * * * approved and recommended for confirmation by the Surveyor-General of New Mexico, Nov. 29, 1872, designated as private land claim No. 64, and duly surveyed by the United States, the field notes of survey and plat being approved by the Surveyor-General of New Mexico, on February 28, 1877, be, and the same is hereby confirmed."

In June, 1886, Surveyor-General Julian wrote the Land Office, suggesting that the grant contained other private claims, and also public lands.

July 7, 1886, Commissioner Sparks ordered an investigation and a new survey. The matter came before the present Secretary of the Interior for consideration, and he held that the survey ordered by Commissioner Sparks was without authority and could not be legally made. In the course of his opinion he says:

"I do not think it necessary to enter into a discussion as to whether the Reeves' survey was right or wrong. It may be stated in a general way, however, it is claimed that by the survey the grant was exaggerated to more than three times its proper size, or from 12,000 to 43,000 acres, that the grant was only for the Mesita or table-lands west of the Juan de Lopez cañon, which terminates some distance north of the Galistio River. Whereas, by the survey the grant is extended some ten miles south of the table lands and several miles south of the river, including both table and valley lands; and also by the survey it was extended over a mile too far west. It seems that these objections to a survey are made too late. That your office and this Department are precluded from inquiring into them by the terms of the confirmation, *supra*. About the construction of that act I have no doubt. In my opinion Congress confirmed the grant in accordance with the survey, which had been made, and was then as much as any other part of the record before that body. Your office thought otherwise. * * * I do not think the position assumed as to the intention of Congress and its meaning is tenable."

The Secretary then cites the decision of the court in the Maxwell case, and proceeds as follows:

"Congress having thus taken final action on the grant, and the confirmatory act not requiring the issue of a patent to the confirmee, this Department is absolutely without further jurisdiction in the premises. The Supreme Court has said in relation to these claims: 'The final action on each claim reserved to Congress is, of course, conclusive and therefore not subject to review in this or any other form.' Astiazaran *v.* Santa Rita Mining Company, 148 U. S., 80. I am therefore of opinion that the decision of your office was erroneous and is contrary to law. The same is hereby reversed, and the papers are herewith returned."

In the above case no patent had been issued to the confirmees. The Commissioner, as in the case at bar, assumed the right to order a new or second survey; but the Secretary overruled him and reversed his action.

THE TIERRA AMARILLA CASE.

The last case decided by the Hon. Secretary of the Interior is that of the Tierra Amarilla grant (19 L. D., 396). In this case he holds that "a statute confirming a private land claim as recommended for confirmation by the Surveyor-General, passes the title of the United States as effectually as if it contained in terms a grant *de novo.*" This is also one of the grants included in the report of the Surveyor-General of New Mexico, and which was confirmed by the act of 1860. The grant in this case was made under the colonization laws of Mexico in 1832. Application was made by "Manuel Martinez," together with eight male children and others who may voluntarily desire to accompany him." In his application he stated "that having registered a tract of land for cultivation and pasturage, situate on the banks of the Chama River, known as the Tierra Amarilla, bounded on the east by the range of mountains, on the west on the line with the mouth of the Laguna de los Caballos, on the north by the Navajo River, and on the south by the Nutrias River," he prayed that the said tract might be granted to him. This petition pursued the same course as was adopted in the case of the Las Vegas grant. It was referred to the corporation of Abiqui, which reported favorably. In this case, as in the Las Vegas grant, particular tracts or allotments were made to individuals and the pasture and water was to be in common. The territorial deputation approved the grant, and parties were placed in possession.

In 1856, Francisco Martinez filed his application with the Surveyor-General of New Mexico to have the validity and extent of the grant ascertained. The Surveyor-General reported in favor of the validity of the grant. The papers were sent to Congress and Congress confirmed the same by the same act of 1860 and under precisely the same form of expression as was adopted in the case of the Las Vegas grant. In 1876 the lands were surveyed, and the survey duly approved by the Surveyor-General. The papers lay in the land office from 1876 to 1881. No exceptions were taken and a patent was issued giving to the holders of the grant 594,515.55 acres, being upwards of 900 square miles.

Some time after the issuance of the patent, the Surveyor-General of Colorado wrote the Land Office that the patent contained too much land. Surveyor-General Julian, who is the same person who found fault with the Las Vegas and Maxwell grants, also wrote the Department taking the same ground. The two principal reasons urged by Julian were:

First. That the patented survey incuded the pastures, wood and watering places, which under the grant were left free and common to all, with the fee reserved to the Mexican Government.

Second. That the grant was made under the Mexican law of 1824 and regulations thereunder in 1828, which limited it to eleven square leagues.

Thereupon Mr. Secretary Noble recommended that the Attorney-General of the United States institute proceedings to declare the patent invalid and set it aside. Proceedings were not begun during his term. After the present Secretary came into office the question was presented to him, and he was called upon to say whether it was advisable to attempt to set aside this patent. After a careful review of the case he decided that it was not, and that if the Government should attempt to set it aside it would undoubtedly be defeated. His decision is very emphatic and he holds expressly that a statute confirming a private land claim "as recommended for confirmation by the Surveyor-General" passes the title from the United States as effectually as if it contained in terms a grant *de novo*. In the course of his decision he uses the following language:

> "This report (alluding to the report of the Surveyor-General) was duly transmitted to Congress, and the grant was confirmed by act of June 21, 1860, *supra*, 'as recommended for confirmation by the Surveyor-General of New Mexico.'
>
> "Repeated decisions of the Supreme Court have declared that such a statute as last quoted passes the title of the United States as effectually as if it contained in terms the grant *de novo*. (Ryan *v.* Carter, 93 U. S., 82.) And since the decisions of the Supreme Court in relation to the Sangre de Cristo grant reported in the case of Tameling *v.* The United States Freehold Company (93 U. S., 644), and the Maxwell grant found in 121 and 122 United States reports, which confirm said doctrine, both being cases in which grants were confirmed by the same words, and in the act of Congress which confirmed the Tierra Amarilla grant, it is unimportant to inquire whether there is anything to be found in the record of the later grant to restrict the quantity to the eleven square

league limits of the Mexican law, or whether the pasture, woods, and watering places were left free and common to all with fee reserved to the Mexican government.

"With full power and authority to do so the grant was confirmed by Congress 'as recommended for confirmation by the Surveyor-General of New Mexico.' 'The confirmation,' says the court in Tameling *v.* The United States Freehold Company, *supra*, 'being absolute and unconditional, we must regard it as effectual and operative for the entire tract.'"

It seems as though the decision in the Tierra Amarilla case made by the present Secretary of the Interior was absolutely conclusive of the one now under consideration. It is too late, in view of the decisions of the Supreme Court of the United States, and the decisions of the Secretary of the Interior, to question the right of Congress to confirm grants of land. It is also too late to question the validity of such confirmation when it is made upon the recommendation of the Surveyor-General unconditionally and absolutely.

When the officer sets forth in his report to Congress that a certain grant is valid and recommends its confirmation, in a case where the law makes it his duty to report as to the validity and extent of such grant and Congress confirms the same, it is too late to question the validity of the confirmation, or deny the extent of its boundaries. Congress is the supreme judge in the matter, and whatever errors, if any, may have existed in the form of, or in the proceedings in regard to the original grant, they are cured by the act of confirmation.

We have already referred to the fact that the confirmation of the Las Vegas grant was a confirmation of the whole and not of a part. It was all or nothing. When Congress says the same shall be confirmed as "recommended by the Surveyor-General," it is folly to pretend that a part of the grant is good and a part bad. The grant is an entirety. It is not for the Secretary of the Interior to say that the title to six thousand acres is good and that the title to 490,000 acres is bad. This attempt to dismember the grant, to destroy it, and pare it down to a few acres is directly in the teeth of the act of Congress, and in violation of every decision of every court that has passed upon the subject.

The foregoing decisions made by the Hon. Secretary of the Interior are directly applicable to the case at bar. They show what the present Secretary would do if the case in hand was considered by him for the first time.

If the above-quoted decisions are law, then the Las Vegas grant is valid in every respect to the full extent of its boundaries. The Hon. Secretary in the cases cited was not embarrassed by any decision of his predecessor, and he proceeded to decide them according to law. As to the Las Vegas case he evidently feels that his hands are tied by the action of Secretary Noble. Fortunately, however, for the rights of the plaintiffs the decision of the last named officer is not binding upon the courts. The action of a head of a department is final only so far as that department is concerned. It is always subject to review by the courts.

Reference to Points made in the Court below.

No copy of appellants' brief in this court has been handed us, and we are in ignorance as to what may be said. We deem it proper to refer to some of the points made by the counsel in the court below, even at the risk of repeating to some extent what has already been said.

The learned counsel for appellants alleged eight grounds of error. These may properly be condensed to two.

The first in substance is that until a patent has been issued the Secretary of the Interior has exclusive control of, and jurisdiction over, the lands contained in the Las Vegas grant; that he may make surveys or do anything else he chooses and the courts have no power to interfere.

The second is that the survey ordered by the Secretary in this case is in conformity with the provisions of the act of Congress confirming the grant.

The last proposition involves the question which has already been fully considered, namely, the validity and extent of the Las Vegas grant and the effect of the act of confirmation and possession under it.

The first proposition is the one upon which counsel seem mainly to rely. They do not attempt to controvert our contention that Congress confirmed the grant as an entirety and gave to Las Vegas the land contained in the boundaries of the grant as surveyed, but they treat the question as one simply involving the right to make surveys, and take the ground that the Secretary and Commissioner may make as many surveys as they choose, regardless of the purpose to be accomplished, and that so long as they are engaged in this business the courts have no power to disturb them.

We are not disposed to deny their right to make surveys in a proper case. When a land grant is confirmed it is the right and duty of the Commissioner to cause its boundaries to be determined and the quantity of land ascertained, and if errors are made in the survey, to correct them. But when they go further and contend that after the lands have been *correctly* surveyed and the boundaries and quantity definitely ascertained, they have the further right to make surveys without limit, and after the lapse of nearly half a century regardless of the purpose for which the surveys are made, then they take a position which is utterly indefensible. When the survey has been made, *and correctly made*, there is nothing further for the Commissioner to do in this regard. His duty is performed; his power exhausted. He certainly will not be permitted to make surveys for amusement, or for the vexation of settlers, or for the destruction of grants and the overthrow of acts of confirmation. There must be a legitimate purpose to warrant the proceeding.

The contention that the right to survey continues up to the time of the issuance of a patent can not be sustained. The Supreme Court of the United States and also the Secretary of the Interior have repeatedly decided that an act of Congress confirming a grant, vests the title of the land in the confirmee as fully and absolutely as though a patent had been issued. Ryan *et al. v.* Carter, 93 U. S., 78; Tameling *v.* U. S. Freehold, 93 U. S., 644; Maxwell Land Grant Case, 121 U. S., 325; Tierra Amarilla Grant, 19 L. D., 396.

In the case now under consideration, the grant was confirmed in June, 1860. The survey was made in 1860. It was completed at that time. It was approved by the Surveyor-General. The plat, map and minutes were filed in the land office, the accounts were settled and the title vested in the town of Las Vegas, under the rules and practice at that time in the Department. No formal approval of the Secretary was necessary. The survey then made is now admitted to be correct. Thirty-five years have passed since the act of confirmation. A generation has grown up. Twenty thousand people have settled and made improvements. Now when the title has vested and settlers have gone there and expended money, time and labor upon the faith of what the Government has done, for the Secretary to order a new survey, not to correct errors or establish boundaries, but to destroy the grant, is a palpable violation of law and a fraud upon the inhabitants.

Let it be remembered that this proceeding upon the part of the Secretary and Commissioner is not to correct errors, or to ascertain the boundaries of the grant, but to take from the Appellees 490,000 acres of land which Congress has confirmed to them, and the present survey is resorted to merely as a means of perfecting and accomplishing the wrong. The object is not to find boundaries or quantity but to destroy. They are dealing with lands which are no part of the public lands of the United States. They are attempting to nullify an act of Congress and are meddling with matters over which they have no jurisdiction or control.

The fact that it is *called* a survey does not change the character of the transaction. Properly designated, it is an attempt to take from a grant heretofore confirmed by Congress the larger part of the lands contained therein and turn out the people who are in possession.

2d. Further contending upon the subject of the survey, counsel declared in their brief that the alleged survey of 1860 was made only for the purpose of ascertaining the area within the described limits of the original grant so as to enable the land officers to determine the acreage for which scrip should be issued to the Baca heirs.

This it seems to us is a fatal admission for the appellants. The Baca heirs were to have just as much land as was contained in the Las Vegas grant. No more, no less. The two quantities were to be exactly the same. One was the measure of the other. Upon what principle of common sense, then, can you give the Baca heirs 496,000 acres, and to the town of Las Vegas only 6,000 acres.

Again, the learned counsel say that the survey of 1860 has never been approved by the Commissioner and Secretary and that it is of no effect without such approval.

To this we answer the survey was approved in every respect as required by the law and the regulations of the

Department at that time. The formal approval of the Secretary was not required. The survey was accepted by the Department, and what is more it was *acted* upon by the Department in such way as to estop the Government from denying its validity. Prior to 1882 no formal approval or acceptance was ever necessary. Since then, in 1882, the law and practice have changed.

That we are correct in this position is attested by the Land Office itself.

In August, 1895, Messrs. Butterworth & Dowell wrote the Commissioner of the Land Office upon this and other subjects. We quote so much of the answer as relates to this question.

"DEPARTMENT OF THE INTERIOR,
"GENERAL LAND OFFICE,
"WASHINGTON, D. C., *September 17, 1895.*

"Messrs. BUTTERWORTH AND DOWELL.

"SIRS: I am in receipt of your letter dated August 31, 1895, requesting information as to the rules and practice of this office in the matter of the approval of surveys of private land claims, and such other surveys as are made by the United States Surveyors-General, prior to 1875, and if a change has taken place in the practice, when it occurred, and what has been considered necessary to constitute an approval since that time.

"In reply I have to state that in the matter of the survey of private land claims (except those in California) prior to March, 1882, this office, upon the receipt of approved returns of survey, from the surveyors-general, examined the plats and field notes, and if the survey appeared to have been executed in accordance with contract and instructions, the accounts of the deputies were adjusted and reported to the Treasury for payment, and the surveyors-general were notified of such action. If errors or omissions were found in the plats or notes, they were returned to the surveyor-general for correction, action by this office being, in the meantime, suspended.

"The notification to the surveyor-general of the adjustment of the deputy's account was virtually an *acceptance* of the survey.

"Notwithstanding the acceptance of and payment for a survey which had been made in accordance with the instructions of the surveyor-general, the same was liable to subsequent rejection, if, upon further examination the survey was found, either by this office, or by the Department, to be not in conformity with the terms of the confirmation, and, in some cases, several surveys of the same grant were made, and the approved returns thereof forwarded by the surveyor-general, before this office or the Department finally accepted a survey as a basis for patent. The issue of a patent constituted in effect, the final approval of the survey upon which the patent was based.

"In March, 1882, this office inaugurated the practice of formally notifying the surveyor-general, by letter of the *acceptance* of surveys, and this practice was continued until the passage of the act of March 3, 1891, entitled 'An act to establish a court of private land claims,' &c. (26 Stats., 854.)

* * * * * *

"In regard to *public land surveys*, I have to state that prior to March, 1882, this office examined the plats and field-notes, and if found correct, the accounts of the deputy surveyors were adjusted and reported to the Treasury for payment. If errors or omissions were discovered, the plats and field-notes were returned to the surveyor-general for necessary corrections prior to the adjustment of accounts.

"The notification of adjustment of accounts was regarded as sufficient notice of the *acceptance* of the surveys.

"Since, and including March, 1882, this office has, *by letter*, formally notified surveyors-general of the *acceptance* of surveys.

"As a rule, all surveys receive the *approval of the surveyor-general*, before the returns are transmitted for the action of this office.

* * * * * *

"Very respectfully, S. W. LAMOREUX,
"*Commissioner.*"

It is very apparent from the letter, that under the practice then existing all had been done which the law required, and when in 1860 the Las Vegas grant was surveyed, approved by the Surveyor-General, papers filed and accounts settled it was "accepted," and remained so without question or doubt during a generation.

Again, *acts* may constitute an approval and acceptance of a survey as much as words. The *act* of making the survey and then issuing patents to the Baca heirs, based upon it, is a solemn affirmance of the survey by the Commissioner, the Secretary and the President. The signing of the Baca patent was equal in effect to the most formal approval of the Las Vegas grant.

IX.

The right to a writ of injunction.

There remains in this case the question whether this court, by writ of injunction, has power to restrain the defendants in their attempt to obtain possession of the lands in question. As to the right and duty of the court in a proper case to interpose by injunction, there can be no doubt, and we think it equally clear that the present is a proper case for the exercise of this power.

If public officers err in the construction of the law, parties are entitled to relief.

Marquez *v.* Fresbie, 101 U. S., 473.
Moore *v.* Robins, 96 U. S., 530.
Noble *v.* Union River Logging Co., 147 U. S., 165.
Board of Liquidation, &c., *v.* McComb, 92 U. S., 541.

Counsel for appellants in Court of Appeals concede (page 9) that if the survey of 1860 is final, conclusive and absolutely determinative of the rights of appellees and the door is closed against executive action, then the injunction shall be granted. It will doubtless also be conceded that if the lands in question are not public lands, then the Secretary should be enjoined.

If the Las Vegas grant was a valid one to the full extent of 496,446 acres contained therein, it necessarily follows that it is no part of the public lands of the United States, and the Secretary of the Interior and the Commissioner of the General Land Office have no business with, or right to interfere in any way with it. Their assumption of authority over it is without warrant of law. Any attempt to survey it in the manner contained in the order which is now sought to be executed, is a trespass upon the lands of private citizens and an invasion of their rights.

The proposition of the appellants is to give to those persons to whom allotments had been made for gardens, etc., prior to 1848, the lands so cultivated and used by them; while all the other lands of the grant without regard to occupation or ownership and which are in fact occupied by people holding under the grant and under the original grantees are to be declared the public property of the United States. If this project is carried out, and 490,000 acres of this land are taken from these people as the defendants propose to do, and is surveyed as public lands and opened up to entry and occupation under the land laws of the United States, an irreparable injury will have been done, for which the courts of law can furnish no adequate remedy. Such action upon the part of the Government depreciates the value of every man's home within the boundaries of the grant. It is a blow aimed at the entire community, injuriously affecting not only one person, but 20,000. It is folly to say that the inhabitants of this grant can wait until their lands are actually taken from them and offered for sale by the Government. After the Government has taken the land and placed it upon the market for cash sale or for occupancy under the homestead law, what is the present owner and occupier of the land to do? To wait for the sale by the Government is ruin. He can not sue the Government for damages. He is utterly without redress. But even if he could go into the courts, the delays, the costs, the depreciation of value, and the clouded title would surely destroy him. When you contemplate the fact that each one of the ten thousand owners and occupiers of this land is put to the same disadvantage; that ten thousand suits would have to be commenced, it is difficult to conceive or estimate the measure of disaster which would have fallen upon this community. It would be to bring upon that settlement the very disaster, or a like disaster to that described in the report of the Senate Committee on Private Land Claims, hereinbefore quoted, "As the plunging of an entire settlement of families into litigation at the imminent hazard of being turned out of their homes, or made to purchase a second time from private owners, lands for which they have paid their government full equivalent, in the labor, risk, and exposure by which they have converted a wilderness surrounded by hostile savages into a civilized and thriving settlement." It was this calamity which the Senate sought to avoid, and which it is the duty of the court to prevent.

The only sure and proper remedy, therefore, is by an appeal to the equitable powers of this court for relief against the consummation of a scheme which works such universal ruin. The province and purpose of an injunction is to prevent the perpetration of a wrong.

We are aware how reluctant the courts are to interpose in any manner with the acts of the heads of the Departments of the Government. These heads of Departments are called upon to take great responsibility and often times exercise great authority. We submit, however, that no head of a Department is above the law, but, on the contrary, is subject to its authority. It is true that it has been decided that the court will not interfere either by injunction or mandamus with the head of a Department or Bureau in any matter which is within his proper discretion and judgment. Where a thing is *purely discretionary*, or where it is a matter left solely to the judgment of the officer, and he is acting in that capacity, neither the writ of injunction nor mandamus will issue. We have already considered this subject of discretion. There are many instances in which it is the right and duty of the judicial authority to intervene. Where the head of a Department is acting *in violation* of law or the legal rights of parties, acting in that which is not a matter of discretion, then these parties injured may appeal to the courts for redress, and the courts will not fail to give it.

A late case decided by the Supreme Court bearing upon the subject is that of Noble *v.* The Union River Logging Railroad Company (147 U. S., 165). That was a bill in equity to enjoin the Secretary of the Interior and the Commissioner of the General Land Office from issuing a certain order revoking the appeal of plaintiff's maps for right of way, etc. The Government sought to set aside and disregard the decision rendered by the former Secretary of the Interior. The parties in whose favor that decision was rendered resisted, and claimed that the action of Mr. Secretary Noble was a violation of every legal right which had been established and vested several years before. Mr. Justice Brown delivered the opinion of the court in that case. He reviewed with care the various decisions of the courts in mandamus and injunction cases, wherein it was held that there was a distinction between acts involving the exercise of judgment or discretion and those which were ministerial. With respect to the former, there was no power to control the executive discretion, however erroneous its exercise seems to have been. But with respect to ministerial duties, the act or refusal to act is, or may become, the subject of review by the courts. The learned judge then proceeds to say:

> "We have no doubt the principle of these decisions applies to a case wherein it is contended that an act by the head of a Department under any view that could be taken of the facts that were laid before it, was *ultra vires* and beyond the scope of his authority. If he has no power at all to do the act complained of, he is as much subject to an injunction as he would be to a mandamus, if he refuses to do the act which the law plainly requires him to do.
>
> "As observed by Mr. Justice Bradley in Board of Liquidation *v.* McComb (92 U. S., 541) 'But it has been well settled that when a plain official duty, requiring no exercise of discretion, is to be performed and the performance is refused, any person who will sustain personal injury by such refusal, may have a mandamus to compel its performance. And when such duty is threatened to be violated by some positive official act, any person who will sustain personal injury thereby for which adequate compensation can not be had at law, may have an injunction to prevent it. In such cases the rights of mandamus and injunction are somewhat co-relative to each other."

The case of New Orleans *v.* Payne (147 U. S., 261) seems to be relied upon by counsel for appellants. An examination will show that it does not in any manner conflict with our position. It is wholly unlike the case at bar. There the survey in question had been made since 1882, and the change of the rule required that it should be formally accepted by the Land Office, which had not been done, and certain matters relating to the first survey had been *expressly reserved* for *further consideration*. It was a case still pending.

That decision is to the effect that while the location of the boundary lines of a land grant is pending before the Land Department and the proper officers are bringing to bear their own judgment and discretion, the courts have no right to interfere, and it is stated that the general rule is that the judicial power will not interpose by mandamus or injunction to limit or direct the action of the departmental officers in respect of matters pending *within their jurisdiction* and control.

The last part of the paragraph of the syllabus is very significant. The court will not interfere with the officers in a matter which is "within their jurisdiction and control."

If, however, they attempt to deal with a matter not within their jurisdiction and control, and seek to override the rights of the citizens, then the necessary inference is that the courts *will* interfere.

Mr. Justice Brown in the course of his opinion referring to Noble *v.* Union River Logging Railroad says:

> "In that case it appeared that the only remedy of the plaintiff was to enjoin the Secretary of the Interior from revoking his approval of a certain map which operated as a grant of land. His contemplated action amounted in effect to the cancellation of a land patent. So in this case if it were made to appear that the former survey had been completed and approved in such manner that all the lands included within the lines of the former survey had become vested in the plaintiff, it is possible that it might be entitled to an injunction against any act which would have the effect of disturbing or unsettling a title thereby acquired."

This last proposition covers our case. The appellees are the owners of the lands contained in the Las Vegas grant. Their title is derived from Congress. Their rights have accrued and they have been in possession for a long period of time.

The Secretary of the Interior does not propose to survey these lands according to the boundaries of the grant to preserve and maintain the grant, but on the contrary, he proposes to destroy the grant and deprive the people of their lands. He has entered upon lands which do not belong to the United States. He starts in with the open and avowed declaration of his intention to take from the people about 490,000 acres of land, which is a destruction of the grant and in direct violation of their rights.

It is no answer to say that we must wait until the survey is completed and the injury is done. We know already what it will be. The appellants have announced their purpose in advance. It is the prerogative and purpose of an injunction to prevent injury. Our rights are imperilled if we wait, and we appeal to the court to stay the work of destruction.

Recapitulation.

We have now presented the important points of the case, and close this brief by a recapitulation. We claim the following points are established:

First: The Las Vegas grant was made in 1835, to the full extent of the boundaries set forth in the petition of Juan de Dios Maese and others, and these boundaries embrace 496,446.96 acres. The grant was approved by the proper tribunal, and the parties placed in possession, all of which was done according to the laws and usages of Mexico.

Second: They have remained in possession, their rights and title unquestioned, except by the Baca heirs, until 1887, a period of 60 years.

Third: By the treaty of Guadalupe Hidalgo, their rights under the grant were preserved.

Fourth: But even if this were not so, and whatever may have been the character of the original proceedings relating to the creation of the grant and the nature of the title conveyed, whether in fee or otherwise, Congress was the sole judge, and with full knowledge has clearly and unconditionally confirmed the grant to the town of Las Vegas and its inhabitants.

Fifth: The grant has been officially and correctly surveyed by order of the Land Office and is found to contain 496.446.96 acres of land and it is agreed that the survey is correct.

Sixth: The Baca heirs having secured that amount of land elsewhere and obtained patents for the same, make no claim to the Las Vegas' grant.

Seventh: The appellees by these proceedings and the act of Congress have become and are the actual and absolute owners of all the land contained in the grant by an indefeasible title, and they and those under whom they claim have been in the peaceable and uninterrupted possession of all these lands for sixty years and in the exclusive possession for thirty-five years.

Eighth: These lands are not part of the public domain.

Ninth: Neither the Secretary of the Interior nor the Commissioner of the General Land Office have any control or jurisdiction over the territory contained in the grant.

Tenth: In directing and making a survey with the declared purpose to turn the great body of these lands back to the public domain and having them made a part of the public lands of the United States, they are invading the rights of private citizens and the town of Las Vegas, and are proceeding in direct and positive violation of law and the rights of the appellees, and are about to do irreparable injury.

We therefore respectfully submit that the decree of the Supreme Court of the District of Columbia and of the Court of Appeals should be affirmed.

ALPHONSO HART,
Solicitor for Appellees.

LONG & FORT,
Of Counsel.

Note.—Suggestion as to the Matter of Appeal.

Since the preparation of our brief in this case, and after a considerable portion of it had been printed, our attention has been called to the decision of the court in the case of the Warner Valley Stock Company *v.* Hoke Smith *et al.* recently rendered. It is due to the court, in view of that decision, to call attention to the peculiar condition of the present case. It differs from the Warner Valley case in several particulars. In the present case the decree of the court below was in favor of the appellees and against the Secretary and Commissioner. Hoke Smith retired from office on the first day of September, 1896, and the appeal was taken, or attempted to be taken, on the fifth day of October—more than a month thereafter. Neither the Secretary of the Interior nor the Commissioner of the General Land Office ever gave any bond for appeal, either as *supersedeas* or otherwise. The decision in the Warner Valley Stock Company case has not yet been published, but we are informed that in that case the Court holds that the Commissioner of the General Land Office is subordinate to and under the control of the Secretary to such an extent that he can not prosecute or defend alone in this court, and that the retiring of his official superior retires him. This being so he would have no power or right to appeal the case by himself, but only in conjunction with his superior, and his superior having gone out of office before the appeal was taken the Commissioner's right to take or prosecute the appeal ceases. Without regard to the merits of the main question, it is respectfully suggested that there has been no valid appeal from the Court of Appeals of the District of Columbia, and that in this situation of affairs the appeal, or pretended appeal, should be dismissed, leaving the decree of the court below to stand as affirmed.

ALPHONSO HART,
Solicitor for Appellees.